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United States
Circuit Court of Appeals
For the Ninth Circuit.

McGOLDRICK LUMBER COMPANY, a Corporation,
tion,

Appellant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, MILWAUKEE LUMBER
COMPANY, a Corporation, LYN LUND-
QUIST and ELIX LINDQUIST,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Idaho, Northern Division.

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*In the Circuit Court of the United States, Ninth Cir-
cuit, District of Idaho, Northern Division, Hold-
ing Terms at Coeur d'Alene.*

McGOLDRICK LUMBER COMPANY,
Complainant,
vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING (Whose Real Name is Un-
known), His Wife, MILWAUKEE LUM-
BER CO., a Corporation,
Defendants.

Complaint.

BILL OF COMPLAINT OF THE McGOLDRICK
LUMBER CO., A CORPORATION, EXHIB-
ITED A G A I N S T T H E D E F E N D A N T
A B O V E N A M E D , C H A R L E S J . K I N S O L V -
I N G A N D J A N E D O E K I N S O L V I N G
(W H O S E R E A L N A M E I S U N K N O W N) ,
H I S W I F E , M I L W A U K E E L U M B E R C O . , A
C O R P O R A T I O N .

To the Honorable Judges of the Circuit Court of the United States of the Ninth Circuit, in and for the District of Idaho, Northern Division, in Equity Sitting:

The McGoldrick Lumber Co., a corporation of the State of Washington, and a resident and citizen of the said State, brings this its bill of complaint against Charles J. Kinsolving and Jane Doe Kinsolving (whose true name is unknown), his wife, and Milwaukee Lumber Co., all citizens of the State of Idaho, residing at St. Maries, Kootenai County, Idaho, and respectfully shows unto your Honors: [1*]

I.

That the above-named complainant, McGoldrick Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Washington, and now is and during all the times hereafter mentioned was a citizen and resident of the said State of Washington.

II.

That the above-named defendants, Charles J. Kinsolving and Jane Doe Kinsolving (whose true name is unknown), his wife, and each of them were, and now are, and during all the times hereinafter mentioned have been citizens and residents of the State of Idaho, living and residing at St. Maries, in the County of Kootenai and State of Idaho, and the Milwaukee Lumber Company is an Idaho corporation, and a citizen and resident of said State.

*Page-number appearing at foot of page of original certified Record.

III.

That the subject matter of this suit consists of real estate situated in the County of Shoshone, and State of Idaho, which is hereafter more particularly described, and the value thereof exceeds the sum of Five Thousand (\$5,000.00) Dollars, and the matter here in dispute, exclusive of costs and interest, exceeds the said sum of Five Thousand (\$5,000.00) Dollars.

IV.

That on the 26th day of September, 1906, one John Shannon, being then and there a citizen and resident of the State of Idaho, and a citizen of the United States, and of lawful age, made and filed with the register of the United States Land Office for the District of Idaho, in Coeur d'Alene, Idaho, his written statement in duplicate designated by proper legal subdivisions for entry under the laws of the United States for cash purchase of timber and stone lands being the Act of Congress of June 3, 1878, Chapter 151, 20 Statutes at Large, page 89, the South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the [2] Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, setting forth that the same was unfit for cultivation, and valuable chiefly for its timber, that it was uninhabited, that it contained no mining or other improvements as far as said applicant knew, nor any valuable deposits of gold, silver, cinnabar, copper or

coal; that applicant had made no other application under the said act, and that he did not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he acquired from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, which said statement was verified by the oath of said applicant, John Shannon, on the said day before the register of said land office at Coeur d'Alene, Idaho, being the district wherein the said land was situated, and the said John Shannon thereupon complied with all the provisions of the Act of Congress in regard to timber and stone lands, being the Act of Congress of June 3, 1878, Chapter 151, 20 Statutes at Large, page 89, a copy of which said entry is hereunto attached marked Exhibit "A" and expressly made a part hereof, and was at said time and place in all ways qualified to and did enter the said lands under the said act, and the said lands were at said time and place unappropriated public lands of the United States open to appropriation under and by virtue of said act, and were lands unfit for cultivation and valuable chiefly for timber situated thereon, and were uninhabited and containing no mining or other improvements, and contained no valuable deposits of gold, silver, cinnabar, [3] copper or coal.

V.

That thereupon the register of the said land office

duly posted a notice of such application for the entry for purchase of the land by legal subdivisions in his office for a period of sixty (60) days, and the said applicant, John Shannon, caused a copy thereof to be published for the full period of sixty (60) days in a newspaper published nearest the location of the said premises, and thereafter and on the 16th day of January, 1907, the said applicant, John Shannon, made his proof before the said register, that the land was of the character contemplated by the said act, unoccupied and without improvements, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal, and thereupon paid unto the said receiver of the said land office, the sum of Four Hundred (\$400.00) Dollars, together with the fees of the register and receiver as provided by law for making the said entry, and thereupon received from the said Receiver of the United States Land Office at Coeur d'Alene, Idaho, Receiver's Receipt for the said land numbered "Timber & Stone Entry No. 2500," a copy of which is hereunto attached marked Exhibit "B," and expressly made a part hereof.

And your orator alleges that the said John Shannon then and there complied in all ways with the laws of the United States covering the entry of the said lands under the said Act, and the said entry so made by the said Shannon was a valid and legal entry and purchase of the said land by the said John Shannon, and your orator shows unto your Honors that said John Shannon thereupon became and was in equity the owner of said land and entitled to have is-

sued and delivered to him letters patent under the seal of the United States conveying unto him, his heirs and assigns, the legal title to said land in fee simple absolute.

VI.

That thereafter and on the 25th day of April, 1907, one [4] Roy C. Lammers, being then and there a citizen of the United States and a citizen and resident of the State of Washington, acting as the agent of your orator, purchased the said land from the said entryman, John Shannon, for the sum of Eight Thousand (\$8,000.00) Dollars, lawful money of the United States of America, which the said Roy C. Lammers then and there paid over and unto the said John Shannon, and the said John Shannon then and there conveyed by warranty deed, the said land unto the said Lammers, a copy of which said deed is hereunto attached marked Exhibit "C," and expressly made a part of this bill of complaint, and the said Lammers then and there took the said title as trustee for your orator, and thereafter and on or about the — day of May, 1907, the said Roy C. Lammers conveyed the said land to your orator, the McGoldrick Lumber Co., and your orator ever since said time has been and now is in equity the owner of the said land and entitled to the possession thereof, and entitled to receive and be vested with the legal right to the said land by and through a conveyance of the said legal title from the United States of America by and through its proper officers to the said John Shannon.

VII.

And your orator further avers that your orator in

purchasing the said land from the said John Shannon was a *bona fide* purchaser for value of said land without notice of any defect whatsoever in the said title, and in making said purchase relied upon the entry of the same and upon the Receiver's Receipt issued to the said John Shannon by the Receiver of the United States Land Office at Coeur d'Alene, Idaho, on the 16th day of January, 1907. [5]

VIII.

That thereafter and on the 16th day of July, 1907, the above-named defendant, Charles J. Kinsolving made and filed in the United States Land Office at Coeur d'Alene, Idaho, his affidavit of contest against the said entry of the said lands by the said John Shannon which is in words and figures as, to wit:

“State of Idaho,
County of Kootenai,—ss.

Charles J. Kinsolving, being first duly sworn, deposes and says:

That on or about the 17th day of July, 1905, at the Coeur d'Alene, Idaho, land office, John Shannon made homestead entry for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 9, in Township 44, North of Range 3 East, B. M., and that thereafter the said Shannon made application to offer final proof on said homestead as a commutation cash entry, which said application was duly and regularly published; that on the day set for offering said final proof, to wit, on the 26th day of September, 1906, the said Shannon relinquished said land to the Government of the United States, and thereafter, on the 26th day of September, 1906, made application, un-

der the timber and stone act, to purchase the same, which said application and certificate is number 2500; that on the 16th day of January, 1907, said Shannon offered and submitted his proof for said land, and, after the same had been submitted your Receiver of the Coeur d'Alene, Idaho, Land Office, issued to him a receipt and certificate of purchase Number 2500.

That on the 24th day of September, 1906, the said John Shannon made, executed and entered into a written agreement with one William McCarter, under and by the terms of which, he, the said Shannon was to deed and convey to the said William McCarter an undivided one-half interest in and to the land sought to be purchased as aforesaid, when he, the said Shannon, had submitted his [6] final proof and received the Receiver's Receipt therefor; that said written contract and agreement was recorded in the office of the County Recorder of Shoshone County, Idaho, on the 21st day of January, 1907, in Book 'E' of Agreements.

That after said Shannon had submitted his final proof and received your Receiver's Receipt therefor, he, the said Shannon, made and executed deed conveying said land to one Joseph H. Johnson, who, as affiant is informed and believes, subsequently conveyed said land to Roy C. Lammers and the McGoldrick Lumber Company, a corporation; that in paying to the Government of the United States the purchase price for said land, the money therefor was furnished to the said Shannon by other parties in consideration of the said Shannon giving to party fur-

nishing said money a part of the consideration which he was to receive from the said Roy C. Lammers and the McGoldrick Lumber Company; that when the consideration for said conveyance as aforesaid was paid, the said Shannon did not receive more than one-third thereof, the balance having been paid to the parties who had furnished him the money to make final proof.

Affiant further alleges upon information and belief, that the consideration paid by said Roy C. Lammers and the McGoldrick Lumber Company, for said land, was the sum of Eight Thousand (\$8,000.00) Dollars, and that the said Shannon did not receive more than Two Thousand Dollars (\$2,000.00) thereof.

That all of the matters herein alleged are matters of record within the United States Land Office and the Office of the County Recorder of Shoshone County, Idaho, and are within the knowledge of the special agents representing the Government of the United States. [7]

On account of the matters and things above set forth affiant alleges, that said timber and stone entry No. 2500 was made for speculative purposes and not for the sole and exclusive benefit of said applicant, John Shannon, and that said John Shannon, by reason of his agreements and contracts as aforesaid, did not receive the full consideration and value of said land.

CHARLES J. KINSOLVING.

Subscribed and sworn to before me this 16th day of July, 1907.

S. L. McFARLAND,
Notary Public in and for Kootenai County, Idaho."

And the said register of the said land office thereupon gave notice as required by law that a hearing of the said charges would be had in his office at Coeur d'Alene, Idaho, on the 13th day of May, 1908, a copy of which said notice is hereunto attached marked Exhibit "D" and made a part of this complaint; and thereafter and on the 21st day of May, 1908, in accordance with the said notice, the parties to the said contest including the said John Shannon and the said Roy C. Lammers, and the said defendant Charles J. Kinsolving and your orator, the McGoldrick Lumber Co., appeared before the register and receiver of the said land office at Coeur d'Alene, Idaho, and proof was duly introduced in behalf of the said contestant, Charles J. Kinsolving and in behalf of the said entryman, John Shannon, and in behalf of the said Roy C. Lammers and your orator, the McGoldrick Lumber Company, as purchaser of said land from said entryman, John Shannon, a copy of which said proof and of which said proceedings is hereunto attached, marked Exhibit "E" and expressly made a part of this bill of complaint. And thereafter and on or about the — day of —, 1908, the said register and receiver of the United States Land Office at Coeur d'Alene, Idaho, filed their written decision supporting the [8] affidavit of contest of the said defendant, Charles J. Kinsolving, and cancelling the entry of the said entryman, John Shan-

non, a copy of which said decision is hereunto attached, marked Exhibit "F," and expressly made a part of this bill of complaint.

IX.

That at the beginning of said proceedings before the said register and receiver your orator demurred to the petition on file or the contest affidavit upon the ground that the statements therein made were insufficient to support the contest or any order with reference to said entry looking to the cancellation thereof and objected to the said register and receiver hearing any proof or taking any testimony in regard thereto, upon the said grounds, which said demurrer and objection said register and receiver overruled and permitted the said contestant to introduce testimony to the manifest injury of your orator and against its rights, and thereby in overruling the said demurrer and objection to the taking of testimony the said register and receiver committed an error of law to the prejudice of the rights of your orator.

X.

And your orator further shows unto your Honors that at said hearing said contestant offered in evidence a certified copy of the contract between the entryman John Shannon and William McCarter, which said contract is attached to the evidence taken before said register and receiver hereunto attached marked "Exhibit 'A' for identification to testimony before receiver," and your orator objected to the introduction of the same upon the ground set forth in said copy of said proof hereunto attached as Exhibit "E," and the said register and receiver sus-

tained your orator's said objection to the admission of said document in evidence and refused to admit the same, but that in making and rendering their said decision [9] said register and receiver treated and considered said pretended contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing and utterly and totally ignored the fact that said pretended contract had when offered in evidence been rejected, and in so considering and treating said contract as if admitted in evidence, said register and receiver erred in law to the prejudice of the rights of your orator.

And your orator further shows that at the conclusion of the testimony of the contestant given before the said register and receiver, and after the said contestant had rested his said case, your orator moved the said register and receiver to dismiss the said contest, for the reason that there had been no evidence introduced that would in any way affect the entry made by said entryman John Shannon on the said land, and that the said evidence of the said contestant clearly showed that the said John Shannon acted at all times within his rights and had made no contract or agreement to convey any part or interest in the said land, and also that said evidence was wholly insufficient to justify the cancellation of the said entry, but the said register and receiver overruled the said motion to dismiss and thereby erred in law to the prejudice of the rights of your orator.

And your orator further shows that at the conclusion of all the testimony before the said register and receiver your orator renewed its motion to dismiss

the said proceedings upon the said grounds, but the said register and receiver overruled the said motion and refused to dismiss the same, and thereby erred in law to the prejudice of the rights of your orator.

And your orator further shows that in making and rendering said decision said register and receiver wrongfully and unlawfully ignored the evidence adduced at said hearing, and without any testimony whatever to support such finding, found that said [10] entry was made for speculative purposes and not for the sole and exclusive benefit of said applicant. That in truth and in fact there is not a scintilla of evidence to support or justify such finding, or any finding whatsoever, that said entry when made by said Shannon, to wit, on September 26, 1906, was made otherwise than for his sole and exclusive use and benefit. That in making said finding said register and receiver misconstrued and misinterpreted the law applicable to such case, in this, to wit, that said register and receiver failed and refused to hold that as a matter of law the contestant was bound to show by evidence that such entry was made for speculative purposes and not for the sole and exclusive benefit of the said Shannon, and said register and receiver held that they, as a matter of law, were authorized and empowered to, and had jurisdiction to find that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of said Shannon totally without evidence to support such finding and upon ungrounded suspicions existing solely in their own minds.

That by reason of said errors and misconstruction

of the law the said register and receiver were induced to and did make and render their said decision. That but for said errors and misconstruction of the law said register and receiver would have dismissed said contest, and letters patent conveying the legal title to said land to said Shannon would have been issued and delivered by the United States of America by and through its proper officers to the said entryman John Shannon, and your orator would thereby have become vested with the said legal title to the said land.

XI.

That thereafter and within the time provided by law your orator appealed from the decision of the said register and receiver of the United States Land Office at Coeur d'Alene, Idaho, [11] to the Commissioner of General Land Office, and thereafter and on the 29th day of May, 1909, the Commissioner of said General Land Office affirmed the decision of the register and receiver of the United States Land Office at Coeur d'Alene, Idaho, a copy of which said decision affirming the same is hereunto attached marked Exhibit "G," and expressly made a part hereof.

XII.

That in making and rendering his said decision said Commissioner of the General Land Office treated and considered the said pretended contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing, and was influenced therein by the decision of the register and receiver of the local land office and

utterly and totally ignored the fact that said pretended contract had when offered in evidence been rejected, and in so considering and treating said contract as if admitted in evidence said Commissioner of the General Land Office erred in law to the prejudice of the rights of your orator.

And your orator further shows that in making and rendering said decision said Commissioner of the General Land Office wrongfully and unlawfully ignored the evidence adduced at said hearing and without any testimony whatsoever to support such finding, found that said entry was made for speculative purposes and not for the sole and exclusive benefit of said applicant. That in truth and in fact there was not a scintilla of evidence to support or justify such finding or any finding whatsoever that said entry when made by the said Shannon, to wit, on September 26, 1906, was made otherwise than for his sole and exclusive use and benefit. That in making said finding said Commissioner of the General Land Office misconstrued and misinterpreted the law applicable in such cases, in this, to wit, that said register and receiver failed and refused to hold that as a matter of law the contestant was bound to show by evidence that such entry was made [12] for speculative purposes and not for the sole and exclusive use and benefit of the said Shannon, and said Commissioner of the General Land Office held that he, as a matter of law, was authorized and empowered to and had jurisdiction to find that said entry was made for speculative purposes and not for the sole use and benefit of said Shannon totally without

evidence to support such finding and upon ungrounded suspicion existing solely in his own mind and in the minds of the register and receiver in the local land office.

That by reason of said errors and misconstruction of the law the said Commissioner of the General Land Office was induced to and did make and render his said decision affirming the decision of the local land office. That but for said errors and misconstruction of the law said Commissioner of the General Land Office would have dismissed said contest, and letters patent conveying the legal title to the said land to said Shannon would have been issued and delivered by the United States of America by and through its proper officers, and your orator would thereby have become vested with said legal title to the said premises.

XIII.

That thereafter and within the time provided by law your orator appealed from the decision of the Commissioner of the General Land Office to the Secretary of the Interior, and thereafter and on the 10th day of May, 1910, the Secretary of the Interior filed his decision affirming the decision of the Commissioner of the General Land Office and of the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, a copy of which said decision is hereunto attached marked Exhibit "H" and expressly made a part hereof. [13]

XIV.

That in making and rendering his said decision said Secretary of the Interior treated and consid-

ered the said pretended contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing, and was influenced therein by the decision of the register and receiver of the *local and* utterly and totally ignored the fact that said pretended contract had when offered in evidence been rejected, and in so considering and treating said contract as if admitted in evidence said Secretary of the Interior erred in law to the prejudice of the rights of your orator.

And your orator further shows that in making and rendering said decision said Secretary of the Interior wrongfully and unlawfully ignored the evidence adduced at said hearing and without any testimony whatsoever to support such finding, found that said entry was made for speculative purposes and not for the sole and exclusive benefit of said applicant. That in truth and in fact there was not a scintilla of evidence to support or justify such finding or any finding whatsoever that said entry when made by the said Shannon, to wit, on September 26, 1906, was made otherwise than for his sole and exclusive use and benefit. That in making said finding said Secretary of the Interior misconstrued and misinterpreted the law applicable to such cases, in this, to wit, that said register and receiver failed and refused to hold that as a matter of law the contestant was bound to show by evidence that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of the said Shannon, and said Secretary of the Interior held that as a matter of law he was authorized and empowered to and had

jurisdiction to find that said entry was made for speculative purposes and not for the sole use and benefit of said Shannon totally without evidence to support such finding and upon ungrounded suspicion existing solely in his [14] own mind and in the minds of the register and receiver in the local land office.

That by reason of said errors and misconstruction of the law the said Secretary of the Interior was induced to and did make and render his said decision affirming the decision of the local land office. That but for the said errors and misconstruction of the law said Secretary of the Interior would have dismissed said contest, and letters patent conveying the legal title to the said land to said Shannon would have been issued and delivered by the United States of America by and through its proper officers, and your orator would thereby have become vested with said legal title to the said premises.

XV.

That thereafter and on the 25th day of October, 1910, the said defendant Charles J. Kinsolving filed a lien selection of the said land by virtue of scrip issued to the Santa Fe Pacific Railway Company in accordance with the Act of Congress of June 4, 1897, and received therefor receiver's receipt covering the said land numbered 06636, and thereafter and on the 27th day of March, 1911, the United States by and through its legally constituted officers, pursuant to said application and proof made, made and caused to be delivered to said defendant Charles J. Kinsolving, patent of the said South Half of the Northwest

Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, and that from and since said date the said above-named defendants, Charles J. Kinsolving and Jane Doe Kinsolving (whose true name is unknown), his wife, have held the legal title to the said premises, and the whole thereof under the said patent, and are still so holding [15] said title.

XVI.

Your orator further alleges that the register and receiver of the United States Land Office at Coeur d'Alene, Idaho, erred in holding that the said timber and stone entry No. 2500 made by the contestee, John Shannon, for the land in controversy in the contest filed by the said defendant, Charles J. Kinsolving, was made for speculative purpose, and not for the sole and exclusive benefit of the said John Shannon, and erred in holding said entry for cancellation, and the said Commissioner of the General Land Office and the Honorable Secretary of the Interior erred in affirming the decision of the said register and receiver, and in holding that said entry No. 2500 should be cancelled, and each and every act of the said officers in regard to the same was, and is against the laws of the United States, and the said officers, and each and all of them, should have decided in favor of the entryman, John Shannon, and in support of the title of your orator.

XVI $\frac{1}{2}$.

That the Milwaukee Lumber Co. claims some interest in said property, the exact nature and extent of which is to your orator unknown.

XVII.

That your orator has no speedy, adequate or complete remedy at law, or any remedy at law in the premises.

XVIII.

That your orator desires to obtain legal title to said premises as hereinbefore alleged from the United States of America under the entry heretofore made by the said entryman, but that it is impossible for it so to do so long as there is outstanding the patent of the United States for said lands as hereinbefore set forth. [16]

IN CONSIDERATION WHEREOF, and for as much as your orator is remediless in the premises, at and by the strict rules of common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable;

May it please your Honors to grant unto your orator a writ of subpoena to be directed to the said Charles J. Kinsolving and Jane Doe Kinsolving (whose true name is unknown), his wife, of St. Maries, Kootenai County, Idaho, and Milwaukee Lumber Co., citizens and residents of the said State of Idaho, as hereinbefore shown, thereby commanding them and each of them at a certain time and at a certain penalty therein to be limited, to personally appear before your Honors and then and there full,

true, direct and perfect answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived); and further to stand to and abide such further order, direction or decree herein as to your Honors shall seem meet and proper.

That it may be decreed by your Honors that your orator is the owner of the said South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, and that the defendants be decreed to be the holders of the title by, through and under the patent of the United States so far as the same relates to the said land in trust, however, for your orator, this complainant, and for its uses and benefit, and that the said defendants be required by said decree to convey to your orator, its successors or assigns, said premises and the whole thereof, and that said title of said defendants in and to said property existing under and by virtue of the said patent be cancelled and annulled, and that your orator be permitted to make application for patent to the said premises [17] under the provisions and laws of the United States covering the entry hereinabove set forth.

That the defendants and each of them be restrained and enjoined by order of this Court from encumbering or disposing of said premises, or any interest therein, pending the final determination of

this action, and that there be granted to your orator such other and further relief as shall be meet, right and equitable in the premises, and that your orator recover of defendants its costs and disbursements herein.

McGOLDRICK LUMBER CO.

By ROY C. LAMMERS.

F. M. DUDLEY,

CULLEN, LEE & FOSTER,

Solicitors for Complainant, 500 Traders Bank Bldg.,
Spokane, Wash.

United States of America,

State of Washington,

County of Spokane,—ss.

Roy C. Lammers, being first duly sworn, on oath deposes and says: That the above-named complainant, The McGoldrick Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Washington, and he is officer thereof, to wit, its Superintendent; that he has read the foregoing bill of complaint, and knows the contents thereof, and the same is true except as to those matters therein stated to be upon information and belief, and as to those he believes them to be true.

ROY C. LAMMERS.

Subscribed and sworn to *before this* 19th day of September, A. D. 1911.

[Seal]

W. E. CULLEN, Jr.,

Notary Public in and for the State of Washington,
Residing at Spokane. [18]

**Exhibit "A" [to Complaint—Application and Sworn
Statement of John Shannon].**

DEPARTMENT OF THE INTERIOR.

TIMBER OR STONE ENTRY.

U. S. Land Office, Coeur d'Alene, Idaho, No. 0668.

Receipt No. ———

APPLICATION AND SWORN STATEMENT.

(To be made in Duplicate.)

I, John Shannon, hereby make application to purchase the South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East of the Boise Meridian, containing 160 acres, within the Coeur d'Alene land district, in the State of Idaho, and the timber thereon, at such value as may be fixed by appraisal, made under authority of the Secretary of the Interior, under the act of June 3, 1878, commonly known as the "Timber and Stone Law," and acts amendatory thereof, and in support of this application I do solemnly swear that I am a native born citizen of the United States, of the age of 45 years, and by occupation a timberman; that I did, on September 1, 1906, examine said land, and from my personal knowledge state that said land is unfit for cultivation and is valuable chiefly for its timber; and that to my best knowledge and belief, based upon said examination, the land is worth ——— Dollars, and the timber thereon, which I estimate to be

——— feet, board measure, is worth ——— dollars, making a total value [19] for the land and timber of four hundred dollars, and no more; that the land is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, coal or other minerals, salt springs, or deposits of salt; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself; that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I am not a member of any association, or a stockholder in any corporation which has filed an application and sworn statement under said act; and that my postoffice address is St. Maries, Idaho, at which place any notice affecting my rights under this application may be sent.

I request that notice be furnished me for publication in the "St. Maries Gazette," a newspaper published at St. Maries, Idaho.

JOHN SHANNON.

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land, or of any right, title or claim thereto, are absolutely null and void as against the United States.

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto, that affiant is to me personally known (or has been [20] satisfactorily identified before me by ——); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office in Coeur d'Alene, Kootenai County, Idaho, within the Coeur d'Alene land district, this 16th day of September, 1906.

R. N. DUNN,
Receiver U. S. Land Office.

REVISED STATUTES OF THE UNITED
STATES. Title LXX. CRIMES, CHAP. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorized on oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more

than two thousand dollars, and by imprisonment at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or wilfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment. [21]

**Exhibit "B" [to Complaint—Receipt, Dated
January 16, 1907].**

Receiver's Office at Coeur d'Alene,
No. 2500. Idaho, Jan. 16, 1907.

Received from John Shannon of Kootenai County, Idaho, the sum of Four Hundred dollars and no cents; being in full for the S. $\frac{1}{2}$, NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of Section No. 9, in Township No. 44 N. of Range No. 3 E., B. M., containing 160 acres and no hundredths, at \$2.50 per acre.

\$400.00. C. D. WARREN,

Receiver.

\$3.10 testimony fee received. Number of written words, 1380. Rate per 100 words, 22 cents. \$10.00 fees collected for filing and acting on application.

U. S. Receiver's Receipt

to

John Shannon.

Recorded at the request of McGoldrick Lumber Co.
Aug. 7, 1907, at 9 o'clock A. M., in Book "P" of

Miscellaneous, page 391, Records of Shoshone County, State of Idaho.

STANLEY P. FAIRWEATHER,

County Recorder.

By John P. Sheehy,

Deputy Recorder. [22]

Exhibit "C" [to Complaint—Deed, Dated April 25, 1907, John Shannon to Roy C. Lammers].

THIS INDENTURE, made this 25th day of April, 1907, between John Shannon, an unmarried man of St. Maries County, of Kootenai, Idaho, party of the first part, and Roy C. Lammers, of Spokane, County of Spokane and State of Washington, party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of One (\$1.00) Dollar, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, alienated, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described lot, pieces or parcels of land, situated in the County of Kootenai, and State of Idaho, and known and described as follows, to wit:

South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{2}$ of NE. $\frac{1}{4}$) and the Northeast Quarter of the Southwest (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$) Quarter, of Section Nine (9), Township Forty-four (44) North,

of Range Three (3) East, Boise Meridian, containing one hundred sixty (160) acres according to the Government survey thereof. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or in equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. [23]

And the said party of the first part, for his heirs, executors and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealing and delivery of these presents he was well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law and fee simple, and has good right, full power and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear of all former or other grants, bargains, sales, liens, taxes, assessments, and incumbrances, of what kind or nature soever; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to

claim the whole or any part thereof, the said party of the first part shall and will warrant and defend.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN SHANNON. (Seal)

State of Washington,
County of Spokane,—ss.

I, W. E. Cullen, Jr., in and for said County, in the State aforesaid, do hereby certify that on this 25th day of April, 1907, personally appeared before me John Shannon, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 25th day of April, A. D. 1907.

W. E. CULLEN, Jr.,

Notary Public, Residing at Spokane, Washington. [24]

Exhibit "D" [to Complaint—Notice of Hearing of Charges Re Application of John Shannon, etc.].

In the United States Land Office, Coeur d'Alene, Idaho.

CHARLES J. KINSOLVING

vs.

JOHN SHANNON.

H. E. 2500 for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$,
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, T. 44, 3 E., B. M.

In the above-entitled case, affidavit of contest by Charles J. Kinsolving against the above-mentioned cash entry by John Shannon, was filed in this office July 16th, 1907, in which it is alleged that prior to said cash entry on January 16th, 1907, and prior to the application of said Shannon for said land on September 26th, 1906, said Shannon

“Made, executed and entered into a written agreement with one William McCarter, under and by the terms of which he, the said Shannon was to deed and convey to the said William McCarter an undivided one-half interest in and to the land sought to be purchased as aforesaid, when he, the said Shannon, had submitted his final proof and received the Receiver’s receipt therefor; that said written contract and agreement was recorded in the office of the County Recorder of Shoshone County, Idaho, on the 21st day of January, 1907, in Book E. of agreements.

That after said Shannon had submitted his final proof, and received your Receiver’s receipt therefor, he, the said Shannon made executed deed conveying said land to one Joseph H. Johnson, who, as affiant is informed and believes, subsequently conveyed said land to Roy C. Lambers and the McGoldrick Lumber Company, a corporation that in paying the United States Government the purchase price for said land, the money therefor was furnished to said Shannon by other parties in consideration of the said

Shannon giving the party furnishing said money a part of the consideration which he was to receive from the said Roy C. Lammers and the McGoldrick Lumber Company; that when the consideration for said conveyance as aforesaid was paid, the said Shannon did not receive more than one-third thereof, the balance having been paid to the parties who had furnished him the money to make final proof.

Affiant further alleges upon information and belief that the consideration paid by the said Roy C. Lammers and the McGoldrick Lumber Company for said land, was the sum of Eight Thousand Dollars (\$8000.00), and that the said Shannon did not receive more than Two Thousand Dollars, \$2000 therefor."

Notice is hereby given that a hearing on said charges will be had in this office May 13th, 1908, at 10 o'clock A. M., when the parties hereto are called to appear and submit testimony therein.

Signed: R. N. DUNN,
Register.

Dated Coeur d'Alene, Idaho, Feb. 28th, 08. [25]

**Exhibit "E" [to Complaint—Proceedings Had
Before Register and Receiver May 21, 1908.]**

KINSOLVING vs. SHANNON.

	Direct.	Cross.	Re-direct.	Recross.	
Roy C. Lammers	4	10	16	16	17
Sam. L. McFarland	18				
John Shannon	19				
Chas. A. Kinsolving	26				
J. H. Shannon	28	34	36		
John Shannon	37	(Recalled)			
John Shannon					
Joseph Johnson	41	42	43	(Recalled)	
R. C. Lammers	43	(Recalled)			
R. T. Morgan	44				
Earl Sanders	50				
F. M. Dudley	52	56	[26]		

May 21, 1908.

By Mr. ELDER.—At this time comes John Shannon, the entryman and protestee in this case, and moves the Hon. Register and Receiver that these proceedings be dismissed and that no further action be taken therein for the reason that said action and proceeding was continued from the 13th day of May, 1908, at 10 o'clock A. M. until the 18th day of May, 1908, without the consent and against the wishes of this protestee, and that on the 18th day of May this protestee being ready and willing to proceed with his trial, that said cause was again continued without the consent of this protestee and against his wishes.

By Mr. DUDLEY.—For Roy C. Lammers and McGoldrick Lumber Co. I desire to demur to the petition filed, or contest affidavit, upon the ground that

the statements therein made are insufficient to support the contest or any order with reference to this entry.

By the REGISTER.—Motion to dismiss is denied.

By Mr. ELDER.—At this time appears John Shannon and reserving all his exceptions and rights under the motion and to the decision of the Hon. Register and Receiver on said motion heretofore made, at this time demurs to the affidavit filed herein for the reason that said affidavit does not state facts sufficient to constitute a proceeding or there are no facts stated sufficient to warrant the cancelling of said entry; that there are no allegations in said affidavit that any other party, other than the entryman, reserved any part of said land or any benefits therefrom.

2d: That said Charles J. Kinsolving is not a proper party contestant or protestant in this action, the title of said land having passed to John Shannon, the Government being the only party to protest said entry. [27]

By the REGISTER.—This motion is overruled for the reason that the sufficiency of the affidavit has been passed upon by the Commissioner of the General Land Office and the hearing ordered by him.

By Mr. McFARLAND.—Now comes the contestant and demurs to the plea and intervention filed on the part of Roy C. Lammers and the McGoldrick Lumber Co., and for grounds of demurrer allege, that the said plea and intervention does not state facts sufficient to constitute a defense against the entry in question.

2d: That the said plea and intervention is ambiguous and uncertain in this, that it does not appear therefrom whether matters therein alleged are with reference to acts committed and things done by the entryman prior to the issuance of the Receiver's final receipt.

3d: That the said plea and intervention is irrelevant and immaterial and particularly all of that portion thereof designated particularly 1, 2, 3, 4, 5, 6, 7 and 8, in this, that all of the matters and things therein alleged are matters, transactions and affairs which took place subsequent to and after the issuance of the Receiver's receipt.

By REGISTER.—Objection overruled. Exceptions.

IT IS HEREBY STIPULATED AND AGREED by and between all parties appearing that John Shannon on the 17th day of July, 1905, made homestead entry No. 4574 in the Coeur d'Alene, Idaho, Land Office for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$; NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 9, T. 44 N., Rge. 3 E., B. M. and a relinquishment of the same filed on the 26th day of Sept., 1906, at 2:45 o'clock P. M.; that on the 26th day of Sept. that the said John Shannon made timber and stone application for the same land and that final proof thereon was offered on the 16th day of Jan., 1907, and receiver's receipt of purchase, No. 2500, issued to him on that date; [28] that on the 21st day of Jan., 1907, John English filed a contest and protest against John Shannon, involving the land in question; that on the 26th day of Jan., 1907, a motion to dismiss the above protest was filed; that

on the 22d day of Jan., 1907, Fred Hamilton filed a contest and protest against said John Shannon, involving the same land in question and it was thereafter dismissed on motion of the protestant, Fred Hamilton.

Contestant at this time offers in evidence a certified copy of a contract between the entryman, John Shannon and William McCarter, the same being the one set up and described in the affidavit of protest, and ask to have the same marked Protestant's Exhibit "A."

By Mr. DUDLEY.—On behalf of Mr. Lammers and the McGoldrick Lumber Co., we object to this paper for the following reasons:

1st: That it is not shown that the John Shannon who signed this paper is the John Shannon who made the entry and who is the contestee named in this case, there being no evidence that Mr. Shannon ever gave or executed such a document as this, and Mr. Shannon being present and the parties being able to interrogate and find out whether he ever executed such a document before offering the paper in evidence.

2d: Upon the ground that the paper is irrelevant and immaterial in that it purports to be a contract to convey the lands described therein when the party of the first part makes final homestead proof of such lands and premises and receives his final Receiver's Receipt therefor, it appearing from the records in the land office and in evidence here, that the homestead entry made by John Shannon for this land was never consummated but was relinquished,

and that thereafter Mr. Shannon made a timber and stone entry of the land, which entry is the only entry in question in this case. [29]

By Mr. ELDER.—On behalf of the contestee, John Shannon, we object to the introduction of this contract:

1st: For the reason that the original instrument is the best evidence.

2d: For the reason that this is a certified copy of the records of an alleged instrument recorded in Shoshone County, Idaho, and is not a certified copy of the original instrument filed.

3d: That it is immaterial for said contract purports to have been made prior to the time when the protestee or contestee John Shannon, relinquished all of his rights in said land to the Government.

4th: That it is immaterial for the reason that said contract states that a certain interest was to be conveyed in said land when final homestead proof on said premises and a Receiver's final receipt therefor had been issued.

[Testimony of Roy C. Lammers.]

ROY C. LAMMERS, being called by Mr. McFarland, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. Mr. Lammers, at the time, or prior to the time you purchased this land, did you have an abstract of it?

A. No, sir, not at the time I purchased.

Q. When did you secure one?

A. Just about the date we purchased.

(Testimony of Roy C. Lammers.)

Q. You had an abstract before the consideration was paid? A. Yes.

Q. Just the day before?

A. I think somewhere—maybe a day before.

Q. How long after you had contracted to purchase it before you got an abstract? [30]

A. I think we had an abstract before we contracted to purchase.

Q. Referring to my first question—

A. I think, as I remember, we telephoned for the abstract at the time we were consummating the purchase, and had it sent in from Wallace.

Q. That was just prior to the time of making payments? A. Yes.

Q. Isn't it a fact that sometime prior to consummating the purchase and making payments that you had certain affidavits made and filed for record and extended on the abstract?

A. Yes, just about the same time, we was about 2 days making the purchase, I guess.

Q. And you had those affidavits prepared and extended on the abstract before you—

A. I don't remember whether they were put on the abstract or not.

Q. Who examined the abstract?

A. Mr. Dudley.

Q. In your plea and intervention you have recited certain payments that you made for and on behalf of Shannon at the time the consideration was made?

A. Yes.

Q. Have you named all of them?

(Testimony of Roy C. Lammers.)

A. I believe so, to Shannon certain amounts, and other parties certain amounts for him, I believe they are all recited.

Q. Do you remember of withholding \$600.00 to pay to Wm. McCarter? A. I do.

Q. That is not mentioned in your plea in intervention, is it? [31]

A. I don't remember whether it is or not. I can find out by looking it over. It is contracted for in the intervention.

Q. Do you remember of writing a letter to R. E. McFarland on or about the 28th or 29th of April, last year, enclosing him an affidavit to have signed by Wm. McCarter?

By Mr. DUDLEY.—We object upon the ground that the correspondence referred to is in the nature of a compromise and that the letter itself is the best evidence.

A. I do.

By Mr. ELDER.—Objected to because it is not binding against this party.

By the REGISTER.—Objection overruled. Exception.

A. I don't know whether I wrote the letter or Mr. Dudley. I don't remember of writing it, but I remember of an affidavit being forwarded to Mr. McFarland on this transaction.

Q. Referring again to my former question, state whether or not you held out as a part of the consideration in the purchase of the Shannon claim and the land in question, \$600.00, which was to be paid

(Testimony of Roy C. Lammers.)

McCarter. A. I did.

Q. At the time you consummated this deal you knew of this \$600.00 to be held out for McCarter?

A. I did in this way: Mr. Shannon told me he owed Mr. McCarter \$600.00 and he was desirous of paying it and I told him I would hold it out, and pay it.

Q. Would you know the affidavit which you sent to R. E. McFarland, if you was to see it?

A. I would know the McCarter affidavit, yes.

Q. Is that it?

A. I believe that is an exact copy: I believe I have an exact copy here I can compare it with. Yes, I believe that is an exact copy. [32]

Q. Are you acquainted with one Dan McLaren?

A. Yes.

Q. Where does he live at present?

A. I don't know; he is a woodsman.

Q. Where was he living on or about Feb. 14, 1907?

A. I think in Spokane; I am not sure, tho.

Q. You were a witness at that time to a certificate that he made, were you not, in Feby. 14, 1907?

A. Not that I remember of; perhaps if I saw the certificate I might recall it to my memory.

Q. I hand you the original certificate or affidavit and ask you if that is the one.

A. Yes, that is my own handwriting.

Q. I ask to have this marked Protestant's Exhibit "C" for identification.

Q. Have you in your possession the original affidavit made by John Shannon on the 25th day of April, 1907, and recorded in Shoshone County, Aug.

(Testimony of Roy C. Lammers.)

7, 1907? A. I have it in my possession.

Q. Have you any objection to its being made a part of the record in this case, you delivering it to the Register and Receiver as soon as possible?

By Mr. DUDLEY.—Here is the carbon copy with the exception of the signature.

Q. This copy which I hand you is a correct copy of that original affidavit, is it?

A. Excepting the signature, I believe it is.

Q. Were you present at the time that was executed? A. I was.

Q. Was it at your request that that affidavit was filed for record?

A. Yes, at the request of our attorney, Mr. Dudley, he had [33] it recorded, as I remember.

I ask to have that marked Contestant's Exhibit "D" for identification.

Q. Have you in your possession the original affidavit made by Jos. H. Johnson on the 25th day of April, 1907?

A. I believe I have a copy of it here, carbon copy, unsigned.

Q. Is this copy which I hand you a correct copy of the original? A. It is a carbon copy.

I ask to have that marked Contestant's Exhibit "E" for identification.

Q. Did you ever see the option which Dan McGregor gave Mr. Shannon for this land in question?

A. No, I did not, Dan McGregor told me he had an option from Jos. H. Johnson for that, I did not see it.

Q. Did he have it with him at the time he made this certificate?

(Testimony of Roy C. Lammers.)

A. He told me he had an option on the land and I took it for granted, I did not see it.

Q. Have you in your possession the original deed from John Shannon to Jos. Johnson?

A. No, I have not,—not that I know of.

Q. Have you in your possession the original deed from Jos. H. Johnson to yourself? A. Yes.

Q. Have you in your possession the original deed of John Shannon to yourself? A. Yes.

Q. Have you ever conveyed this land to the McGregor Lumber Co.? A. I have not. [34]

Q. You are holding as trustee for the McGoldrick Lumber Co.? A. Yes.

Q. And have been ever since you received the deeds? A. Yes.

Q. Is that usual in your business transactions, between you and McGoldrick Lumber Co.?

A. Yes, I have a great number of lands in my name that belong to the McGoldrick Lumber Co. held by me as trustee.

Q. Is there anything in the deed from Johnson to you or Shannon to you that shows you are trustee for the McGoldrick Lumber Co.? A. No, sir.

Q. Now, Mr. Lammers, you are still holding the \$600.00 which you offered to pay McCarter last April, are you not? A. I am.

Q. In addition to that you are withholding \$1000.00 that belongs to Shannon on account of patent? A. I am.

Q. Are you withholding any more than that?

A. That is all.

(Testimony of Roy C. Lammers.)

Q. Do you remember any other persons that you paid money to on account of Shannon, aside from those you have mentioned in your plea and intervention, including McCarter? A. Yes.

Q. Who?

A. I can give you a list. I gave Mr. John Shannon, personally, my check for \$350.00; I gave Mr. Jos. Johnson \$2,939.00; I gave Mr. Ralph T. Morgan \$900.00, and I deposited in the Exchange National Bank of Coeur d'Alene for Mr. Shannon, to his credit, \$1,757.00, and I gave Mr. William Dollar, the President of the Exchange National Bank, \$200.00 at Mr. Shannon's request, to take up a note that Mr. Shannon had endorsed as he told me. I gave Mr. [35] R. E. McFarland \$100.00 at Mr. Shannon's request; I gave Mr. Dan McLaren \$50.00 at Mr. Shannon's request; I paid Calhoun Hardware Co. \$24.00 at Mr. Shannon's request; I paid Windship & Henderson \$80.00 at Mr. Shannon's request, and I held back \$600.00, which Mr. Shannon told me to pay Wm. McCarter, as money that he owed him, and I held back \$1,000.00 on the purchase price, which will constitute the contract price of the land.

Q. Totalling \$8,000.00?

A. Yes, total \$8,000.00.

Cross-examination.

(By Mr. DUDLEY.)

Q. When did you first become acquainted with this land in question in this contest?

A. It was about the fall of 1906, somewhere along in Sept. or Oct.

(Testimony of Roy C. Lammers.)

Q. And when did you first have any talk or conversation with any person with reference to purchasing this land?

A. Not until I talked with McLaren, under his option from Johnson.

Q. When did you first talk with him with reference to the date of the option?

A. The same date that the option is dated, at the Halliday Hotel in Spokane.

Q. In your conversation, what, if anything, was said, as to who owned the land?

A. Not anything, I had seen it on the daily abstract sheets that Mr. Johnson was the present owner of the land by warranty deed and I knew he had the title to it.

Q. What, if anything, was done with reference to that option?

A. I don't understand your question.

Q. What, if anything, was done with reference to taking up [36] that option that you had obtained from Mr. McLaren?

A. I told him to have the proper warranty deeds and abstracts brought in so our attorney could look them over and pass on them and that I would accept the property under that agreement.

Q. Had you, prior to that time, had these lands cruised or examined? A. Yes. .

Q. When?

A. In the fall of 1906, I had the whole basin examined.

Q. State under what circumstances.

(Testimony of Roy C. Lammers.)

A. I sent my cruisers off into that district and gave them the whole district to look over.

Q. Did Mr. McLaren furnish an abstract of this land? A. No, sir.

Q. What was your next negotiation with reference to the purchase of this land, with whom and when?

A. Johnson and myself in your office, 'Johnson and Shannon and Mr. R. T. Morgan, just a minute; this McLaren option expired and Mr. R. T. Morgan drew up the option direct from Johnson to me, on or about the date of the expiration of this one, I believe covering a period of ten days.

Q. I call your attention to this paper and ask you whether or not that is the option from Johnson that you refer to. A. It is.

Q. The original paper? A. Yes.

We ask that this be marked Exhibit "1" for identification.

Q. Do you know by whom and where this option was drawn up?

A. In Mr. Morgan's office in this city.

Q. Where did you first see it?

A. When he drew it up.

Q. Who was present? [37]

A. Mr. Johnson, Mr. Morgan and myself, and I don't remember of anyone else.

Q. What was afterwards done with respect to this option of the purchase of this land?

A. Mr. Johnson gave us a warranty deed.

Q. State when, where and who was present.

A. Mr. Johnson came into your office with Mr.

(Testimony of Roy C. Lammers.)

Shannon, I think it was on the 26th day of April, and met me there and under your direction, I believe you drew the warranty deed from Mr. Johnson to myself, also a deed from Mr. Shannon to myself, covering the descriptions of this property.

Q. Where are those deeds at the present time?

A. I don't know just exactly their location, they are in the vault at the office or else in Washington, D. C.

Q. Have you made any search for them in the last few days?

A. Yes, I thought they were in the office but I did not find them.

Q. Coming to the time that these deeds were given, Mr. Lammers, I wish you would tell us, as well as you can recollect, just what occurred there.

A. Mr. Johnson and Mr. Shannon met me in your office to consummate this deal and the deeds were drawn up and properly signed and executed under your direction and, at Mr. Johnson's and Mr. Shannon's request, I paid over this money to the parties as they directed it paid, with my personal check, and held back under our agreement, \$1,000.00 until the patent to this land was issued.

Q. When did you first learn that Mr. Shannon had any interest in this land?

A. I saw that from the blue-print of the plat.

Q. After you saw the record of his transfer to Johnson?

A. Mr. Johnson made the statement in your office, to yourself and me, that as a matter of fact, his deed

(Testimony of Roy C. Lammers.)

from Shannon was [38] just given as security for the amount that Shannon owed him.

Q. Was Mr. Shannon present at the time?

A. Yes.

Q. Did he acquiesce in this statement?

A. Yes, he said that was what the deed was given for, Mr. Johnson said it practically constituted a mortgage and that the only reason Mr. Johnson had a deed for this property was to secure himself in the amount of money that Mr. Shannon owed him.

By Mr. McFARLAND.—I object to this line of testimony on the ground of hearsay, one of the parties being present and no reason shown why the other one should not be present to testify to facts.

By the REGISTER.—Objection overruled. Exception.

Q. I will ask you whether or not at that time and prior to your purchase of this land I required Mr. Johnson to furnish an affidavit as to those facts and whether or not the affidavit which is marked as Protestant's Exhibit "E" for identification, was then and there prepared and executed by Mr. Johnson.

A. Yes, it was.

Q. I will ask you whether or not, at or prior to that time, your attention had been called in the abstract of title to an instrument purporting to be a contract between John Shannon and Wm. McCarter, by which Shannon agreed, in consideration of, I think, \$1,000.00 to convey to McCarter the land in contest whenever he had proved up on his homestead entry.

(Testimony of Roy C. Lammers.)

A. Yes, you called my attention to that in the abstract.

Q. I will ask you what inquiry was then and there made by you of Mr. Shannon, with reference to that instrument.

A. As I remember, you asked Mr. Shannon if he had executed such an instrument.

Q. What did he say with reference to that?

A. He denied it.

Q. Now, I call your attention to a paper marked Contestant's [39] Exhibit "D" for identification and ask you whether or not that instrument was signed and sworn to by Mr. Shannon before you purchased this land.

A. It was. That is a carbon copy.

Q. Now, Mr. Lammers, what was the arrangement *Mr. Shannon with* reference to the purchase price of this land?

A. I agreed to pay him \$8,000.00 for the land and hold back \$1,000.00 until such time as the patent was issued, pay \$7,000.00 under his direction.

Q. I wish you would state—give a list of the names of the parties to whom he directed you to make payments and the amounts which you paid according to those directions.

A. I already done that in my testimony.

Q. For whom, if anyone, were you acting in these transactions? A. The McGoldrick Lumber Co.

Q. What was your relation at that time with the McGoldrick Lumber Co.?

A. To look after the buying of timber and their

(Testimony of Roy C. Lammers.)

outside interests generally.

Q. Are you an officer of the corporation?

A. No, sir.

Q. Is your father an officer of the corporation?

A. No, sir; I don't believe he is, he is a director.

Q. How long have you been in the service of that corporation? A. About three years.

Q. How long has the corporation been organized?

A. That is about the time it was organized; I come out about a month after it was started.

Q. Who advanced the money that was paid upon this purchase price? [40]

A. The McGoldrick Lumber Co., placed it to my credit in the bank at my request.

Q. I will ask you whether or not, prior to Feby. 14, 1907, the date of the option from McLaren, you or the McGoldrick Lumber Co., had any negotiations or made any dealings with Mr. Shannon, or with anyone, with respect to the purchase of this land?

A. We did not.

Q. I will ask you whether or not, prior to April 25th or 26th, at the time you made this purchase, you or the McGoldrick Lumber Co., or anyone for the McGoldrick Lumber Co., or anyone for you, directly or indirectly had paid or agreed to pay Mr. Shannon any money whatsoever for this land?

A. I did not.

Q. I will ask you whether or not, at or prior to the time Mr. Shannon entered this land on June 16, 1907, the McGoldrick Lumber Co., or you, or anyone acting for the McGoldrick Lumber Co., or you, had

(Testimony of Roy C. Lammers.)

any agreement, understanding or arrangement, directly or indirectly, with Mr. Shannon or with anyone acting or claiming to act for him, by which you were to purchase this land or any part thereof?

A. I never opened any negotiations for the purchase of this land until I took the matter up with Mr. McLaren.

Q. Had you ever, prior to the time Mr. Shannon entered this land, advanced any money or agreed to advance any money, or security or anything upon which Mr. Shannon could realize money to *enable* to enter this land? A. No, I did not.

Q. And the same is true of the McGoldrick Lumber Co.?

A. Yes, the same is true of them. I was the only agent they had at the time.

Q. Now, Mr. Lammers, had you made any arrangement or agreement, directly or indirectly, or have any understanding of any [41] kind with anyone, at or prior to the time Mr. Shannon made entry of this land Jan. 16, 1907, or at or prior to the date of this option from McLaren, by which Mr. Shannon was to receive any money or anyone whatsoever was to receive any money from you or from the McGoldrick Lumber Co., for or on account of this land or for the timber on it?

A. I never opened negotiations for the purchase of this land until I took it up with McLaren.

Q. Will ask you whether or not, Mr. Lammers, you or the McGoldrick Lumber Co., or any officer or agent of the McGoldrick Lumber Co., to your knowl-

(Testimony of Roy C. Lammers.)

edge, had any notice or knowledge whatsoever at or prior to the time you purchased this land from Mr. Shannon, or at or until the initiation of this contest, that there was any claim by anyone that Mr. Shannon had not entered this land for his own use and his own benefit?

A. No, I don't believe there is anything of record.

Q. Aside from the question of record, did you have any notice from anybody that there was any claim, or that there was anything wrong with this entry?

A. No.

Redirect Examination.

(By Mr. McFARLAND.)

Q. Did you know when the contest of English was initiated?

A. I heard about it afterwards, I did not pay any attention to it, never went into it.

Q. That was prior to the filing of this affidavit, was it not, in this case? A. I could not say.

Q. Did you hear anything about the other contest being initiated? A. Yes, I did. [42]

Q. That was also prior to the filing of the affidavit in this case?

A. No, when I heard of that was at the time I got the option of Johnson at Mr. Morgan's office and he informed me of this and also had a release of it at the time I believe.

Q. After you had consummated the deal and received the deeds from Mr. Johnson and Mr. Shannon you paid out the amounts which was the consideration; is that true, did you? A. I did.

(Testimony of Roy C. Lammers.)

Q. Take this letter, Mr. Lammers, and state whether or not this is a copy of the one which I called your attention to, the one which you sent to R. E. McFarland?

A. Yes, I believe it is, I would not say for sure; it sounds just as though I wrote it and I would say quite positively that it is.

I ask to have this marked Protestant's Exhibit "F" for identification.

Recross-examination.

(By Mr. DUDLEY.)

Q. I call your attention to this paper, Protestant's Exhibit "B" for identification, I meant to ask you, will you state under what circumstances that was prepared and sent?

A. You prepared this yourself and gave it to me and I told you I would mail it or see that Mr. McFarland got it, saying that I owed him \$600.00 at the time, and your instructions to me were to have it signed by McCarter and pay him the \$600.00 that I owed, under Shannon's request, and I mailed this to Mr. McFarland, apparently, who is Mr. McCarter's attorney, and informed him that upon its being properly signed that I would give him the \$600.00 which I was instructed to by Mr. Shannon.

Q. This letter which was just offered in evidence as Protestant's Exhibit "F" for identification is the letter you wrote? [43] A. Yes, it is.

Q. When, Mr. Lammers, with reference to the time that these lands were conveyed by Mr. Johnson and Mr. Shannon to you, was this letter and this affidavit

(Testimony of Roy C. Lammers.)

transmitted? A. At the same time.

Redirect Examination.

By Mr. McFARLAND.—We ask to have this letter to Roy C. Lammers from S. L. McFarland marked Protestant's Exhibit "G" for identification.

Protestant now offers in evidence certified abstract of title to the land in question and ask to have the same marked Protestant's Exhibit "H" for identification.

By Mr. ELDER.—I desire to object to the introduction of that abstract as incompetent, irrelevant and immaterial and for the reason that there is no sufficient foundation.

By the REGISTER.—Objection sustained. Exception.

By Mr. DUDLEY.—I ask leave at this time, so as not to further delay proceedings, to procure and furnish as a part of the record in this case, one from Shannon to Johnson, one from Johnson to Lammers and one from Shannon to Lammers.

[Testimony of Sam L. McFarland.]

SAM L. McFARLAND, being sworn, testified as follows:

My name is Sam L. McFarland; residence, St. Maries, Idaho. On the 13th of this month I met John Shannon, the entryman in this case, for the first time in Joseph H. Johnson's place of business, in Coeur d'Alene, Idaho, and after telling him who I was he got to talking about the case with me.

By Mr. DUDLEY.—At this time, on behalf of the McGoldrick Lumber Co., and Mr. Lammers, I ob-

(Testimony of Sam L. McFarland.)

ject to this statement made by Mr. Shannon after the conveyance to Lammers and McGoldrick Lumber Co., as hearsay statement. [44]

By REGISTER.—We will hear Mr. McFarland's statement.

And he wanted to know what we expected to prove; I merely made the statement to him, "The affidavit of contest of course," he then made the remark, "Well, that contract that I signed with McCarter was before I relinquished my homestead and had nothing to do with my timber and stone."

By Mr. DUDLEY.—I move to strike out that statement so far as Lammers and the McGoldrick Lumber Co. is concerned, as being made prior to the time Mr. Shannon had conveyed his interest in this land to these parties and his statements made to third parties would not be any evidence against them, and it is hearsay so far as these parties are concerned.

By the REGISTER.—Motion denied.

By Mr. ELDER.—Objected to as immaterial.

By Mr. McFARLAND.—I renew the offer to offer in evidence a certified copy of contract between Shannon and McCarter.

By Mr. DUDLEY.—Objected to for the same reasons as objected to before, the identity of the person executing this contract, a certified copy of which is offered in evidence, with the John Shannon who made the homestead entry and the timber and stone entry, has not been shown, giving full weight to the testimony of Mr. McFarland, which by no means

(Testimony of John Shannon.)

follows that the contract referred to in the conversation between Mr. McFarland and Mr. Shannon is this paper which is now offered in evidence.

By the REGISTER.—Objection sustained.

[Testimony of John Shannon.]

JOHN SHANNON, being called by Mr. McFarland, testifies as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. State your name and place of residence.

A. John Shannon; live at Coeur d'Alene City at present.

Q. How long have you been a resident of the State of Idaho? [45] A. About 6 years.

Q. Where did you reside prior to making your proof on this entry?

A. At St. Maries, prior to the proof.

Q. Yes. A. Coeur d'Alene.

Q. After making final proof where did you go?

A. I was in Coeur d'Alene for quite a while and Spokane for a good while.

Q. Any other place? A. Yes.

Q. Where? A. Back in the State of Maine.

Q. How long have you been in Coeur d'Alene since your return here the last time?

A. I have been steady in Coeur d'Alene for about 30 days.

Q. Are you acquainted with Jos. H. Johnson?

A. Yes.

Q. How long have you known Mr. Johnson prior

(Testimony of John Shannon.)

to making your final proof?

A. Oh, probably a year or thereabouts.

Q. What has been the nature of your acquaintance with him?

A. Well, I stopped at his place and roomed there when I come to town.

Q. What business transaction, if any, did you have with him, aside from stopping at his place of business?

By Mr. ELDER.—Objected to as irrelevant and immaterial.

By the REGISTER.—Objection overruled.

A. I don't know as there was anything particular outside of that.

Q. In stopping at his hotel and in his other place of business, you were a customer of his, were you not? [46] A. Yes, as a rule.

Q. Was that the extent of all your business transactions that you had with Mr. Johnson during the year immediately preceding the time that you offered final proof on this land?

A. No, I borrowed some money once in a while.

Q. How much money did you borrow and how often?

A. I could not state right close; it was quite a little while ago. Probably \$10.00, \$20.00 or \$30.00 at one time.

Q. That was all, was it? A. Yes, thereabouts.

Q. State whether or not, or if so how and in what manner, you became indebted to Johnson in the sum of \$2,900.00 and some odd dollars, prior to the time

(Testimony of John Shannon.)

you made final proof and during the year you were acquainted with him.

By Mr. ELDER.—Objected to as irrelevant and immaterial.

By the REGISTER.—Objection overruled.

A. I borrowed it, room rent, etc.

Q. Do you mean to state that covering a period of one year, that on account of borrowing \$10.00, \$15.00 or \$20.00 at a time and on account of your room rent that you became indebted to Mr. Johnson in the sum of twenty-nine hundred and some odd dollars?

A. Yes, I think I did, and then later on—

Q. I am talking about preceding that—

A. I got some money from him along about the first of Feby.

Q. Now, on the date that you got your final receipt you gave Mr. Johnson a deed for this land, didn't you?

A. Not that I know of, not that I can remember of very well.

Q. Do you say that you did not?

A. Not that I can remember of; if I did it was not my natural signature.

Q. If you gave Mr. Johnson a deed for this land on the 16th day of Jany., 1906, the same day that you got your Receiver's [47] Receipt, then it was not your natural signature; is that right?

A. Yes, sir.

Q. Who did you ever deed this land to then?

A. I deeded it to Roy C. Lammers.

Q. Is that the only person you deeded it to?

(Testimony of John Shannon.)

A. That is the only person I ever knew of deeding it to; if I did I was not in shape to do business.

Q. Who was present at the time that you made this deed to Roy C. Lammers?

A. Mr. Lammers and Mr. Johnson and this gentleman here, I can't call him by name, and Judge Morgan and my brother, I think.

Q. Judge Morgan was representing you and Mr. Johnson, was he not? A. Yes.

Q. You directed Mr. Lammers to pay Judge Morgan \$900.00, didn't you? A. Yes.

Q. Was that for services rendered in this particular transaction? A. Yes.

Q. Do you remember anybody else you told him to pay money to? A. Yes.

Q. Who else?

A. A certain amount of money to the hardware store at St. Maries and a certain amount of money to Windship & Henderson, \$24.00, if I remember right, to the Hardware Company, and \$80.00 to Windship & Henderson and \$600.00 to William McCarter.

Q. Now, referring again to your acquaintance with Johnson during the year immediately preceding you making this final proof, in which you stated that you became indebted to him in this amount of money, I will ask you if he kept you in money during that time [48] when you needed it?

A. No, sir.

Q. You had money beyond that? A. Yes.

Q. How did you happen to be borrowing then?

(Testimony of John Shannon.)

A. It was out on interest and I could not get it from the parties.

Q. Who were the parties that owed it to you?

A. My brother at Columbia Falls, Mont.

Q. Was that where you got the money when you made this final proof?

A. Yes, he forwarded me that money.

Q. Now, isn't it a fact, Mr. Shannon, that when you offered this final proof on this timber and stone entry that you testified before the local office here that you had money in the Kalispel Bank which you had had for 4 or 5 years and which you had earned in Montana, Idaho and Washington?

By Mr. ELDER.—Objected to for he cannot cross-examine his own witness.

By Mr. DUDLEY.—Objected to for the same reason and upon the further ground that where testimony has been reduced to writing and you cross-examine a witness with respect to his previous testimony that written testimony must be shown to him.

By the REGISTER.—Objection sustained.

Q. Prior to making this timber and stone entry you had a homestead on this same land?

By Mr. ELDER.—Objected to as immaterial. It is shown by the records in this office that he made a relinquishment to the Government of all his rights to this land.

Q. When you offered your testimony on behalf of your entry to the land in question, do you remember where you said you got the money for which you

(Testimony of John Shannon.)

paid for this claim?

A. I said Columbia Falls, Mont. I might have said Kalispel [49] in my final proof but I aimed to say Columbia Falls.

Q. You say you had loaned this money to your brother? A. Yes.

Q. How long had he had it?

A. 6 or 7 years, along about '95 to the present time, to the time I proved up, the 16th day of Jan., or about a month before that he returned it to me.

Q. Well, he had all this amount, didn't he?

A. Yes, more than that; he sent me \$500.00,—5 \$100.00 bills in a common letter.

Q. Registered letter? A. No, sir.

Q. And that money you say you earned where?

A. I made the most of it in Montana, some of it in Washington.

Q. Now, do you remember whether or not you received any money on account of your Receiver's Receipt, prior to the time you made this deed to Lammers? A. No, sir.

Q. You did not receive any at all?

A. No, sir. You say prior to the time I deeded this land to Mr. Lammers?

Q. Yes. A. Oh, yes, certainly I did.

Q. Who did you get that from, Johnson?

By Mr. ELDER.—I object to him leading his own witness.

Q. Who did you get it from?

A. Mr. Johnson the most of it, but from several people.

(Testimony of John Shannon.)

Q. I mean on account of this claim.

A. Oh, on account of this claim. [50]

Q. You don't remember of signing this deed on the 16th day of Jany. 1906? A. No, I don't.

By Mr. DUDLEY.—Do you recollect giving any mortgage or paper to Mr. Johnson right after you proved up on the 16th day of Jany.? A. No, sir.

Q. You have no recollection of that at all?

A. No, sir.

Q. Do you recollect making an affidavit Mr. Shannon at the time you gave this deed to Mr. Lammers? A. Yes.

Q. I call your attention to this paper, Contestant's Exhibit "D" for identification (reads): Is that the affidavit you made at the time? A. Yes.

Q. Now, in that affidavit you will notice that it says: That you are the grantor in that deed dated Jany. 16, 1907, does that refresh your memory, do you remember of making any conveyance to Johnson? A. I can't remember.

Q. You don't remember whether you did or not?

A. No, sir.

Q. At the time you made this affidavit you had those facts that you swore to fresh in your mind?

A. Yes.

Q. And the affidavit was true as you swore to it?

A. Yes.

Q. You say that you owed Mr. Johnson at the time Mr. Lammers bought that land something like \$2,900.00? A. Yes.

Q. And that debt had arisen partly out of money

(Testimony of John Shannon.)

that you owed him for room rent and money he loaned you? [51] A. Yes.

Q. During what time did your loans cover?

A. The most of them was loaned from along about the first of Feby. until about the date of the sale.

Q. Did Mr. Johnson have any agreement with you whatever, at the time you entered this land Jan. 16, by which you agreed when you entered it that you would convey that land to him? A. No, sir.

Q. Did you make any agreement of that kind with anyone whatever? A. No, sir.

Q. And the only person you recollect that you made any conveyance to was Mr. Lammers in April?

A. Yes, sir.

Q. Do you remember when you first met Mr. Lammers in that connection?

A. I could not state.

Q. Was it in Spokane about the time you made the deed? A. Just about that time.

Q. About the time you come to my office?

A. I met Mr. Lammers before that about a year or so but I did not know who he was.

Q. At that time there was nothing about this land or about buying or selling? A. No, sir.

Witness excused.

[Testimony of Charles A. Kinsolving.]

CHARLES A. KINSOLVING, being called by Mr. McFarland, after being duly sworn, testified as follows:

(Testimony of Charles A. Kinsolving.)

Direct Examination.

(By Mr. McFARLAND.)

Q. State your age and place of residence.

A. Past 30; reside in St. Maries, Idaho. [52]

Q. How long have you been a resident of Idaho?

A. About 15 months.

Q. Are you a native-born citizen of the U. S.?

A. I am.

Q. Have you ever used either your homestead or your timber and stone right? A. I have not.

Q. Are you acquainted with the land in question?

A. I am.

Q. State, as near as you can, the first time you remember of having seen the land.

A. Well, it was prior to the affidavit; I don't remember just exactly the date.

Q. Are you the protestant in this case?

A. I am.

Q. Are you acquainted with John Shannon?

A. I am.

Q. When did you first meet him?

A. I met him about 3 or 4 months ago as near as I can judge. He was introduced to me by Mr. Ross who runs a hotel at St. Maries.

Witness excused.

By Mr. McFARLAND.—We offer in evidence Contestant's Exhibit "D."

Same admitted.

We offer in evidence Protestant's Exhibit "E," marked for identification.

Same admitted.

(Testimony of Charles A. Kinsolving.)

We offer in evidence Protestant's Exhibit "F," marked for identification.

By Mr. ELDER.—Objected to as irrelevant and immaterial, and hearsay.

By Mr. DUDLEY.—Objected to as irrelevant and immaterial. [53]

By the REGISTER.—Objection sustained.

We offer in evidence Protestant's Exhibit "G," marked for identification.

By Mr. ELDER.—Objected to as incompetent, irrelevant and immaterial and hearsay.

By Mr. DUDLEY.—We object on the same grounds.

By the REGISTER.—Objection sustained.

We offer in evidence Protestant's Exhibit "B," marked for identification.

By Mr. DUDLEY.—Objected to as irrelevant and immaterial, it appearing from the testimony that that was sent months after this entry was made and subsequent to the time of the purchase of the lands by Mr. Lammers.

By Mr. ELDER.—Objected to as irrelevant, incompetent and immaterial and in no way binding upon the protestee or contestee in this action.

By the REGISTER.—Objection sustained.

We offer in evidence certified copy of final proof of Jno. Shannon taken at the final proof of the entry contested and ask to have it marked Contestant's Exhibit "H."

By Mr. DUDLEY.—Objected to as immaterial.

At this time the further hearing of this case was continued to 9 o'clock A. M., May 22d, 1908.

May 22, 1908, at 9 o'clock A. M.

[Testimony of J. H. Johnson.]

J. H. JOHNSON, being called by Mr. McFarland, testified as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. State your name, age and place of residence.

A. J. H. Johnson; 48; Coeur d'Alene, Idaho.

Q. How long have you resided in Coeur d'Alene?

A. 3 years. [54]

Q. What is your business Mr. Johnson?

A. Running hotel.

Q. How long have you known John Shannon, entryman in this case? A. About 3 years.

Q. How long had you known him prior to Jany. 16, 1907?

A. I had known him ever since I had been here before that.

Q. About how long?

A. I would have to figure up a little bit.

Q. State the nature of that acquaintance with him? Prior to Jany. 16, 1907.

A. He was always a customer at my hotel, and saloon, etc.

Q. What, if any, business transactions did you have with him prior to Jan. 16, 1907?

A. Never any more than a customer.

Q. Are you the same Jos. H. Johnson to whom John Shannon gave a warranty deed from the land in question on the 16th day of Jany. 1907?

A. Yes.

(Testimony of J. H. Johnson.)

Q. Where was that deed made?

A. In Coeur d'Alene.

Q. Who was present?

A. There was Earl Sanders and Mr. Flynn, John Shannon and Pat Shannon and myself.

Q. You subsequently made an affidavit with reference to this warranty deed, didn't you?

A. I went through the whole business whatever there was attached to it.

Q. You subsequently made an affidavit with reference to this deed in the office of Cullen & Dudley at Spokane, Wash., who were attorneys for the McGoldrick Lumber Co., and Roy C. Lammers, didn't you? [55]

A. I acknowledged the deed, certainly.

Q. Do you remember the purport of that affidavit?

By Mr. DUDLEY.—I suggest that the affidavit be the best evidence.

Q. I hand you Protestant's Exhibit "E," which has been offered in evidence, and ask you if that is a copy of the affidavit which you made in Cullen & Dudley's office on the 25th day of April, 1907?

A. Yes, sir.

Q. In the affidavit you stated that this deed was given as a mortgage to secure certain money which Shannon owed you? A. Yes.

Q. How much did he owe you on the 16th day of Jany. 1907? A. I don't know exactly.

Q. Have you any way of ascertaining.

A. Not at the present time.

Q. How long would it take you to find out?

(Testimony of J. H. Johnson.)

A. Probably take me some time.

Q. Can you give me an estimate of how much he owed you on the 16th day of Jan., 1907?

A. No. It was fixed up after that, I don't know just what time or how much there was at that time.

Q. Did he owe you as much as \$500.00 on the 16th day of Jany., 1907?

A. I could not say, I don't know. I did not keep track that close.

Q. Would you say he owed you more than that?

A. He might of.

Q. Up to the 16th day of Jany., 1907, the only business transactions you had with Shannon was as a patron of your hotel and saloon? A. Yes.

Q. What he owed you up to that time was on account of his hotel bill and saloon bill, was it not?

[56] A. Yes.

Q. At the time that you took this deed, why did you not take a mortgage on the land instead of this land?

A. Because the lawyer made a deed out, that it was better that way.

Q. At whose request?

A. He stated that was the best way to do it and I told him to fix it up.

Q. Did you explain to your attorney at that time that Mr. Shannon was indebted to you something in the neighborhood of \$500.00?

A. I did not tell him anything about it. That was nothing to him; all he had to do was to secure me.

Q. Did you tell the attorney at that time that Mr.

(Testimony of J. H. Johnson.)

Shannon was indebted to you and that you wanted security for it? A. Yes.

Q. What, if any, advice did he give you with reference to it?

A. Well, he said the best way was to just draw up a deed; he said it did not make any difference anyhow.

Q. Who was that attorney? A. Earl Sanders.

Q. Did you tell Mr. Sanders at that time how much Mr. Shannon was indebted to you?

A. No, sir, it was none of his business I was just getting security.

Q. Did you make any memorandum of statement of account to Shannon at that time as to what his indebtedness was? A. I think so.

Q. Who was present in the office, Mr. Johnson, at the time this deed was drawn up between you and Shannon?

A. Mr. Sanders and Mr. Flynn and John Shannon and Pat Shannon. [57]

Q. Do you remember about the time of the day that the deed was prepared?

A. Along in the evening.

Q. How long after he had made his final proof on the land? A. Probably three or four hours.

Q. Who was present in Cullen & Dudley's office in Spokane, Wash., at the time that you made this affidavit, a copy of which has been offered in evidence?

A. Mr. Morgan, Mr. Lammers, Mr. Dudley and also Mr. Cullen and myself and Shannon.

(Testimony of J. H. Johnson.)

Q. State what took place there at that time.

A. The sale of the timber claim.

Q. From whom to whom?

A. John Shannon to Lammers.

Q. What part, if any, did you take in the transaction? A. Simply turned it over.

Q. Do you know what instruments, if any, were passed at that time? A. I cannot say.

Q. Did Mr. Shannon make and execute a deed at that time? A. Yes.

Q. Prior to going to the office of Cullen & Dudley, in Spokane, do you remember of a conference or meeting between yourself, Judge Morgan, Shannon and Wm. McCarter, at the Halliday Hotel in Spokane? A. No, sir.

Q. Were you ever present at any meeting in which the matter of the conveyance of this land was discussed, at the Halliday Hotel in Spokane?

Q. At the time of the meeting in Cullen & Dudley's office did you make and execute and deliver a warranty deed to Roy C. Lammers for the land in question?

A. If I remember right, it was transferred to Johnny and [58] then Johnny gave them the deed; they wanted it direct from him, if I remember rightly.

Q. At the time you secured this deed from Shannon in Sanders & Flynn's office in Coeur d'Alene, on the 16th day of Jan., 1907, did you give Mr. Shannon any instrument showing that you held title merely as a mortgagee? A. No, sir.

(Testimony of J. H. Johnson.)

Q. Prior to Jany., and including Jany. 16, 1907, the law firm of Sanders & Flynn of Coeur d'Alene advised you in this matter, did they not?

A. I could not say as to that.

Q. State when, if at all, you first sought the advice of R. T. Morgan? A. Not till after this came up.

Q. About when? A. After the deed was issued.

Q. About when?

A. I don't remember. I am very poor to remember dates.

Q. In order to refresh your memory, Mr. Johnson, I will state that the deed from Shannon to you, according to the record, was executed on Jany. 16, 1907, and that on the 25th of April, 1907, Shannon conveyed the land to Roy C. Lammers, now having made this statement, can you give me an idea when you first sought the advice of R. T. Morgan regarding any matters about this transaction?

A. I could not give any date.

Q. Can you estimate how long after the 16th day of Jan. 1907? A. I cannot say.

Q. Who employed R. T. Morgan?

A. Of course I employed him to see that I carried my end of it through and of course Johnny hired him also.

Q. Did you pay him for the services which he rendered to you personally? [59]

By Mr. ELDER.—Objected to as immaterial.

By Mr. DUDLEY.—I object on the same ground.

A. I paid him for all services he done for me.

Q. That was for any services which he rendered

(Testimony of J. H. Johnson.)

to you personally? A. Yes.

Q. You paid him out of your own individual funds? A. I paid him all services rendered me.

Q. Out of your own individual funds?

A. Certainly.

Q. When was the first time you had any conversation with Shannon, prior to Jany. 16, 1907, with reference to securing you your money which he owed you?

By Mr. DUDLEY.—Objected to as assuming a fact which there is no evidence of, that there had been any conversation.

Question changes.

Q. How long, if at all? A. Never at all.

Q. How long, if at all, prior to the time of the issuance of Receiver's final receipt to him, did you have any conversation with Shannon regarding the securing you for the money which he owed you?

A. Nothing said in regard to security.

Q. When did you have the first conversation with him regarding security for the money he owed you?

A. When I got the security.

Q. Was that about three hours afterwards, as you have testified to? A. Three or four, maybe five.

Q. Now, Mr. Johnson, at the time you had this conference in Cullen & Dudley's office in Spokane, Wash., at which time Shannon conveyed the land in question to Roy C. Lammers, did you make any statement to Shannon as to his indebtedness to you?

A. No, sir. [60]

Q. Do you remember the amount that was paid

(Testimony of J. H. Johnson.)

you at that time by Roy C. Lammers?

A. I think I do.

Q. How much?

By Mr. ELDER.—Objected to as immaterial.

By the REGISTER.—Objection overruled.

A. Oh, it might have been \$500.00 and it might have been \$1,000.00.

Q. Not over \$1,000.00? A. It might have been.

Q. Will you say it was not over \$1,000.00?

A. It was about that I guess.

Cross-examination.

By Mr. DUDLEY.—(Hands witness check-book.)

Q. Was not the check that Mr. Lammers gave you on that date Mr. Johnson, \$2,939.00?

A. Yes, that is right but I did not think it was that much.

Q. Mr. Johnson, Mr. Shannon had been doing business with you in connection with your bar for a year or two prior to Jan. 1906? A. Yes.

Q. And he was a pretty heavy drinker?

A. Yes.

Q. Isn't it a fact that when he would run short of money he would borrow from you \$10.00 or \$15.00 or \$20.00 from time to time? A. Yes.

Q. And that continued until the time that you settled your accounts when Mr. Lammers bought the land? A. Yes.

Q. And the amount which he was owing you at this time was agreed between you and Shannon to be \$2,939.00? The amount Mr. Lammers gave you?

A. Yes. [61]

(Testimony of J. H. Johnson.)

Q. Now, at the time you and Mr. Morgan and Mr. Shannon and Mr. Lammers and Mr. Shannon were at the office of Cullen & Dudley, at the time that you closed up this transaction— A. Yes.

Q. Now, at that time you informed us that this deed which you had obtained from Mr. Shannon was a mortgage to secure the payment of the money he owed you? A. Yes.

Q. But isn't it a fact that on that date, Mr. Johnson, that I told you that that left the title standing in your name and instead of taking a release of mortgage from you, to make a perfect title, we would want a deed from you? A. Yes.

Q. And I also at that time told you that I would want this affidavit that you made for the purpose of clearing the record? A. Yes.

Q. And I drew the affidavit and you executed it? A. Yes.

Q. Now, I call your attention to the sheet in this abstract of title showing the deed from Johnson to Roy C. Lammers, and I ask you to examine that and state whether or not, if that refreshes your memory, as to whether or not you gave Mr. Lammers the deed on that occasion? A. He took a deed from both.

Q. Mr. Johnson, did you give Mr. Shannon any money for the purpose of enabling him to enter this land at the time he made the entry?

A. No, sir, not that I know of.

Q. Had you, prior to the time he made his entry, had any arrangement or agreement or understanding with him, directly or indirectly, by which he was to

(Testimony of J. H. Johnson.)

convey the land to you, after he made his entry?

A. No, sir. [62]

Redirect Examination.

(By Mr. McFARLAND.)

Q. Do you keep a book account Mr. Johnson of your business transactions? A. No.

Q. Any transactions involving as much as \$2,900.00, do you keep any book account of?

A. That is given by orders.

Q. Do you keep any book account of these orders?

A. No, sir; simply hand them back when I secure it.

Q. Covering a period during which Shannon contracted the indebtedness to you on account of hotel and bar bill and money borrowed of you, did you keep any account of that?

A. Just took his I. O. U., and when he settled he got his I. O. U.'s.

Q. Did you, every time he stayed all night at your house, take his I. O. U. or every time he bought drinks take his I. O. U.?

A. If he run a bill to \$50.00 or \$100.00 I would take his I. O. U. for it.

Q. Well, whenever he would stop at your hotel or buy at your bar did you take his I. O. U. for it before it reaches that amount?

A. He generally got the cash and paid for it.

Q. Have you kept any book account or have you any statement showing any business transactions between you and the Shannon up to the 25th day of April, 1907?

(Testimony of J. H. Johnson.)

A. Nothing any more than notes, notes that he has issued.

Q. You have no record of those notes?

A. The notes show for themselves.

Q. You have no record of those notes? A. No.

Q. What is the largest note that you know of his having [63] issued to you?

A. I don't remember now.

Q. I understand you to say that you paid R. T. Morgan for all business that he transacted for you individually?

A. I paid him for all services that he rendered to me.

Q. Out of your own individual funds?

A. I suppose it was my funds.

Q. At whose instance and request did Judge Morgan go to Cullen & Dudley's office in Spokane?

A. Johnny Shannon, he was the man he was doing business for.

Witness excused.

[Testimony of John Shannon (Recalled).]

JOHN SHANNON, recalled by Mr. McFarland, after being duly sworn, testified as follows:

(By Mr. McFARLAND.)

Q. Mr. Shannon, are you acquainted with Mr. Caple, the Special Government Agent?

A. I don't believe I am,—not that I know of.

Q. Do you remember of meeting Mr. Caple, the Special Government Agent, at or near St. Maries, Idaho, during the month of July or August last year?

A. I believe I did; I don't know whether he was

(Testimony of John Shannon.)

the man you are speaking about; I don't know his name or anything about him,—he may have been a horse thief, for all I know.

Q. Where was that, at Cox's camp on the St. Maries River? A. It was at the Maries.

Q. Do you remember of having made a written statement to him at that time?

A. Yes, to a certain man, if it is the same man, I don't know him from anybody else, but I made a statement to him—what kind of a looking man, this man you are speaking about?

Q. A tall dark complected man?

A. Yes, that is the fellow.

Q. You signed a statement before him at that time, did you? [64]

A. Yes, I did not read it over very thoroughly and did not know how much was in it, but I stated at that time to the best of my knowledge, he and his man that was with him, almost made me say that I received money from Roy C. Lammers to prove up on that claim with, and if I would not say that they would take me and lock me up. I made a statement there that I sold to Roy C. Lammers for the amount of \$8,000.00 and for him to pay, what I owed up river to any person in that country, and I can't just remember the numbers but it was certain amounts—I think \$24.00 to the Hardware Co., at St. Maries and somewhere about \$80.00 to Windship & Henderson and \$600.00 to Wm. McCarter.

Q. Did you, at that time, say to him and sign a statement that you had made this contract with Wm.

(Testimony of John Shannon.)

McCarter at the time that your homestead entry was in effect, but that after you relinquished the homestead entry that you got the money from Johnson to prove up on?

A. No, sir, I never made no such remark in my life,—no man can prove it in the State of Idaho.

Q. Did you tell him that Johnson got the biggest part of your money from your claim and that all you got out of it was enough to make a trip back to the State of Maine?

By Mr. DUDLEY.—I object to that as leading and they are apparently laying a foundation for impeachment.

By the REGISTER.—Objection sustained.

Q. Now, go on, Mr. Shannon, and state just as near as you remember what you did state to Mr. Caple or the gentleman to whom I call your attention.

By Mr. ELDER.—Objected to as irrelevant and immaterial and the instrument is the best evidence of the statement.

By Mr. DUDLEY.—On behalf of McGoldrick Lumber Co., and Mr. Lammers, statements made by Mr. Shannon after the conveying to them, would not be binding upon them or competent or relevant testimony. [65]

By the REGISTER.—Objection overruled. Exception.

By Mr. ELDER.—Objected to as immaterial. The protestant's own witness has testified that there was no contract between those parties before the time of this entry.

(Testimony of John Shannon.)

By the REGISTER.—Objection overruled.

A. I don't know at that time; it has been so long I have forgotten.

Q. Do you remember anything you said to him at that time? A. Said to who.

Q. To Mr. Caple, this man that you saw near St. Maries?

A. Yes, I remember quite a lot I said to him. I said a number of things about the transactions, how I sold my claim and what I did with it, and I stated to him the amount of money I paid to everyone, or give authority to Mr. Lammers to pay these parties.

Q. Do you remember the name of the man who was with Mr. Caple at that time?

A. His name is—I can't remember now, I have known him 2 or 3 years.

Q. Was it S. M. Babbitt?

A. That is the man, sir.

Q. Mr. Shannon, when did you first employ R. T. Morgan to represent you in the conveyance of this land from yourself to Roy C. Lammers?

A. I cannot remember the date at all.

Q. Was it between the time that you proved up and the time that you sold?

A. It would be along thereabouts.

Q. Do you remember how many visits you made to Spokane in connection with this transaction?

A. I do not.

Q. Do you remember whether you made more than one or not?

A. Yes, I made several trips to Spokane during

(Testimony of John Shannon.)

the 35 or 40 [66] days. I guess probably once or twice a week, I cannot swear positively, may have been 50, may have been 30, may have been 10.

Q. Did Judge Morgan accompany you on each trip? A. No, sir, never.

Q. What was the nature of his employment?

A. The nature of his employment between me and him was to see about those rascals that were trying to steal my claim away from me.

Q. Did you have in mind any rascals at that time?

A. Yes, I did.

Q. You don't remember the first that you consulted him about the matter, do you?

A. Not just exactly.

Q. Did you know that he was in the personal employment of Mr. Johnson? A. No, sir.

Q. When you gave this order to Mr. Lammers to pay R. T. Morgan \$900.00, which was for services rendered to you personally, was it? A. Yes.

Q. Did you know at that time that he was in the employment of Mr. Johnson? A. Yes.

Q. When did you first find out?

A. Along about the time that I paid him.

Q. That is the first time you found it out?

A. Yes.

Q. Was that after the land had been conveyed, after you signed the deed?

By Mr. DUDLEY.—Objected to as immaterial.

By the REGISTER.—Objection overruled.

A. I ain't positive; I think it was. [67]

Q. Mr. Shannon, do you remember of ever having

(Testimony of John Shannon.)

talked with Mr. McCarter in the Halliday Hotel in Spokane regarding the transaction of your selling the land to Mr. Lammers?

A. No, sir, I never did.

Q. Did you ever have any conversation with him in Spokane at any time regarding the matter?

A. No, sir, I never did.

Q. Are you acquainted with C. C. Fuller?

A. No, sir, I don't know him at all.

Q. Now, in order to refresh your memory, I will state that C. C. Fuller is in the employ of the Monarch Lumber Co., residing at Remington, Idaho, on the St. Joe River.

A. What kind of a looking man is he?

Q. Large, heavy set.

A. No, sir, I don't know him.

Q. Prior to going into Cullen & Dudley's office in Spokane, on the 25th day of April, 1907, where, if at all, did you talk this matter over?

A. No place at all; just took the car from the city of Coeur d'Alene and went to the city of Spokane and went right into the office and done business,—did not talk to anybody at all.

Q. Who negotiated the sale for you?

A. In what way?

Q. Between you and Mr. Lammers.

A. Mr. McLaren, I guess, made the sale.

Witness excused.

[Testimony of Joseph Johnson (Recalled).]

JOSEPH JOHNSON, recalled by Mr. McFarland, testified as follows:

(By Mr. McFARLAND.)

Q. Mr. Johnson, prior to April 25, 1907, did you give R. C. Lammers an option on this land in question?

A. No, sir,—yes, I did too,—no, I think I gave it to McLaren. [68]

Q. Was that a written option? A. Yes.

Q. Did you negotiate the sale of this land with Mr. Lammers? A. No, sir.

Q. Who first approached Mr. Lammers with reference to selling the claim, if you know?

A. I cannot tell you as to that.

Q. Who first approached you with reference to giving an option, if you know? A. Mr. McLaren.

Q. And did you give McLaren at that time a written option? A. Yes.

Q. Did you give anyone else a written option?

A. No, sir.

Cross-examination.

By Mr. DUDLEY.—I hand you Claimant's Exhibit 1 for identification; look at that and see if that refreshes your recollection any concerning the transaction?

A. Yes, that is all right, that was long before McLaren, wasn't it?

Q. I hand you Protestant's Exhibit "C" for identification and ask you to examine that.

A. This is what they took from me to Lammers.

(Testimony of Joseph Johnson.)

Q. I will ask you if, prior to Feb. 14th, 1907, you had given a power of attorney or option to Dan McLaren. A. Yes.

Q. And after that had expired did you give this option April 17, to Roy C. Lammers, direct?

A. Yes, I must have given it to him; that is my signature all right, but I have forgotten what time it was I gave it to him. [69]

Q. Look at the date; was it about that date?

A. I cannot say as to the date; that is my signature there.

Q. Had Mr. Shannon told you to find a buyer for this land?

A. Yes, it was through his request that I give that that way; he requested it.

Q. And it was under this option of April 17, that the deal was finally closed, on April 25th?

A. Yes, sir.

Redirect Examination.

(By Mr. McFARLAND.)

Q. After having taken a warranty deed from Shannon to yourself to secure a claim in the neighborhood of \$500.00 as you have testified to, and considering the deed a mortgage, as you stated in your affidavit, which is a part of the record in this case, you then gave an option to McLaren and afterwards an option to Roy C. Lammers, is that correct?

A. Yes.

Witness excused.

[Testimony of R. C. Lammers (Recalled).]

R. C. LAMMERS, being called by Mr. McFarland, testified as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. Mr. Lammers, have you the cancelled check for \$2,939.00, which you delivered to Mr. Johnson on the 25th day of April, 1907?

A. I believe I have it in Spokane.

Q. Can you produce it? A. I think so.

Q. Will you, and make it a part of the record?

A. I will if it is possible to find it.

[Testimony of Jacob Johnson (Recalled).]

JACOB JOHNSON, recalled by Mr. Dudley, testified as follows:

(By Mr. DUDLEY.) [70]

Q. Mr. Johnson, I believe you stated that Mr. Shannon used liquor, and has since you have known him, very excessively? A. Yes, sir.

Q. I will ask you whether or not that his excessive use of liquor has impaired his memory and mental faculties? A. I think so; yes.

Witness excused.

[Testimony of R. T. Morgan.]

R. T. MORGAN, being called by Mr. McFarland, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. State your name, residence and occupation.

A. R. T. Morgan; Coeur d'Alene, Idaho; attorney at law.

(Testimony of R. T. Morgan.)

Q. Are you acquainted with Jos. H. Johnson?

A. I am.

Q. How long have you known him?

A. I think I first met him during Jany., 1907; as to the date I can't say.

Q. Between the first day of Jany., 1907, and the 25th day of April, 1907, were you acting in the capacity of his attorney? A. I think so.

Q. State whether or not, as attorney, you advised him with reference to the conveyance or any other transactions in connection with a deed from himself to Roy C. Lammers for the land in question from Jany. 1st, 1907, to and including April 26, 1907?

A. If I recollect right, I think there was nothing said or no advice given in reference to the deed by Johnson to Lammers—at least I don't remember anything of that character at this time.

Q. Did he consult you regarding any transaction in connection with the Shannon timber and stone entry between those dates?

A. I think so, yes. I would like to say in explanation of question relative to my acting as attorney for Mr. Johnson—I acted also for Mr. Shannon at that time. [71]

Q. Did you have a consultation with Mr. Johnson and some other parties in the Halliday Hotel in Spokane between the 15th day of April, 1907, and the 25th day of April, 1907, with reference to the Shannon claim?

By Mr. DUDLEY.—Objected to as immaterial; it relates to a transaction which was long subsequent

(Testimony of R. T. Morgan.)

to the entry which is attached.

By the REGISTER.—Objection overruled.

A. I cannot remember now; there were so many conversations and consultations in reference to this claim of Shannon's.

Q. Did you ever have any consultation regarding this particular claim at the Halliday Hotel in Spokane prior to the 25th day of April, 1907?

A. I can't remember of any conversation or consultation.

Q. Are you acquainted with C. C. Fuller?

A. I am.

Q. Are you acquainted with Wm. McCarter?

A. I am.

Q. Did you, prior to April 25, ever have any consultation, at which time those two parties were present, with Mr. Johnson, regarding the Shannon claim?

A. No consultation, no; there might have been a discussion or consultation in which the Shannon claim was discussed.

Q. At the Halliday Hotel in Spokane?

A. It might have been at the Halliday; I think they were there one day when we were there.

Q. Was Mr. Johnson there at that time?

A. I don't remember.

Q. When did you commence your employment with Mr. Shannon, as attorney for him?

A. Well, it was about—a few days before the motion to dismiss the contest then pending between John English and John Shannon in this office; it was along in Jany. sometime, if my recollection serves me

(Testimony of R. T. Morgan.)

correctly, of 1907. [72]

Q. Was it subsequent or prior to the time of the issuance of the receiver's final receipt?

A. Subsequent, I never had anything to do with Mr. Johnson, Mr. Shannon or anyone connected with this matter and knew nothing of it until the final receipt was brought to me.

Q. At the time that you were representing Mr. Shannon in this matter, as you have testified to, were you also in the employment of Mr. Johnson?

A. I don't know that their joint interests were ever discussed; it was understood that myself and Mr. Crane represented the interests which were attacked at that time by John English and someone else; I have forgotten who it was.

Q. Were you and Mr. Crane representing Johnson & Shannon together?

A. Well, we represented those interests, whatever they were; Mr. Johnson was the first man that came to me in regard to the matter.

Q. When you speak of interest, what interest do you have reference to?

A. The interests involved in that contest, whatever they were, I don't remember now; the papers will show.

Q. Now, repeating my question again, during that period were you employed by both Mr. Shannon and Mr. Johnson together?

A. I was employed by Mr. Johnson who had a deed to this property.

Q. How long did you continue in his employ?

(Testimony of R. T. Morgan.)

A. Until the matter was finally disposed of in the land department and until the transfer of his interest to either Mr. Lammers or McGoldrick Lumber Co.

Q. Did Mr. Johnson pay you personally for those services?

By Mr. DUDLEY.—Objected to as immaterial.

By the REGISTER.—Objection overruled.

A. In part he paid me in cash and the balance of the fee [73] came at the time of the sale to Mr. Lammers.

Q. What part did Mr. Johnson pay you in connection with this Shannon entry?

By Mr. ELDER.—Objected to as immaterial.

By the REGISTER.—Objection overruled.

A. Well, I looked to him for all the fee because the employment was made by him and I would consider that the fee came from Mr. Johnson.

Q. Now, a moment ago you stated that a portion of the fee was paid in cash by Mr. Johnson and the balance came at the time of the transfer; was that portion which Mr. Johnson paid in cash paid on account of employment between you and himself?

A. That was paid on account of employment to defend this contest.

Q. Well, now, with reference to my question again—

A. What I referred to in my former answer was—at the time I was employed I received a retainer which Mr. Johnson paid in cash.

Q. Did Mr. Johnson afterwards on his own personal account, pay you any further sum for your services to him?

(Testimony of R. T. Morgan.)

A. Well, the balance of the fee came by check issued by Mr. Lammers at the time the settlement was made with him.

Q. When did you first commence your employment with Shannon?

A. Whenever that contest was filed, I will state that there was no definite agreement or any conversation prior to the filing of the papers on the part of the contestee, between myself and Mr. Shannon.

Q. What was the amount of the check which was given you on the 25th of April and by whom and on whose account?

A. I don't know that it was given on the 25th of April; if that is the date *then* the money was paid over, I received a check for \$900.00. [74]

Q. On whose account?

A. I don't remember who gave it to me; I think it was Mr. Lammers' check and on account of my services in this contest.

Q. At whose instance was the check given?

A. Johnson's.

Q. Were you present in Cullen & Dudley's office in Spokane, Wash., on the 25th day of April, 1907, the time the deed was exchanged between Johnson and Lammers for the land in question?

A. I think *it* was.

Q. At the time state who told Mr. Lammers to give you the check for \$900.00?

A. Well, I could not say; it was understood, and Mr. Lammers had been previously informed of the arrangements regarding my employment and I think

(Testimony of R. T. Morgan.)

had knowledge that that amount was to go to me.

Q. Do you mean to state that Mr. Lammers, without being told by anyone there at that time, gave you a check for \$900.00?

A. There must have been some previous arrangement.

Q. Do you remember what that previous arrangement was and where made?

A. I don't know where it was made but it was a matter that I think was understood between myself, Mr. Johnson and Mr. Lammers, that I should receive that fee in case of the successful termination of this contest, and Mr. Lammers was informed of that fact and paid me the money or gave me the check.

Q. You represented Johnson and incidentally Shannon in the contest between English and Shannon?

A. I necessarily had to represent Mr. Shannon because he was the contestee.

Q. That contest was dismissed on motion of English or his attorney, was it not?

A. It was not; it was ordered dismissed by the Commissioner of the General Land Office. [75]

Q. Did you also represent Shannon in a subsequent contest? A. Subsequent contest?

Q. Yes. A. What contest was that?

Q. In the case of Hamilton.

A. In the same way that I represented him in the other contest.

Q. Was that contest dismissed on motion of Hamilton, or his attorney?

(Testimony of R. T. Morgan.)

A. I don't remember; the papers are here on file to show for themselves.

Q. Have you any recollection about it?

A. There was a paper filed by Hamilton, I think, dismissing that contest or ordering it dismissed.

Q. Now, Judge Morgan, with reference to the English contest, was that contest dismissed by the commissioner prior to April 25, the date on which Johnson conveyed this land?

By Mr. DUDLEY.—I object to that as the record is the best evidence.

By the REGISTER.—Objection sustained.

Q. Do you know what amount was paid to either Mr. English or Mr. Hamilton on account of their contest?

By Mr. DUDLEY.—Objected to as irrelevant and immaterial, and assuming that some money was paid.

Question withdrawn.

Witness makes statement.

So far as my knowledge goes, there was nothing at any time—never one dollar paid to anyone in consideration of dismissing any contest or for any consideration with reference to the litigation of this Shannon claim.

Q. Now, going back again to your employment with Mr. Johnson, at the time of the conveyance from Johnson to Mr. Lammers, do [76] you know anything regarding the accounts or indebtedness between Johnson and Shannon?

A. Nothing any more than Mr. Shannon owed Mr. Johnson some money but what it was for or on what

(Testimony of R. T. Morgan.)

account I don't know.

Q. You don't know anything about the amount?

A. I do not.

Witness excused.

[Testimony of Earl Sanders.]

EARL SANDERS, being called by Mr. McFarland, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. McFARLAND.)

Q. State your name, residence and occupation.

A. Earl Sanders; Coeur d'Alene, Idaho; attorney at law.

Q. Mr. Sanders, from the abstract which I hand you, I notice a deed from John Shannon to Joseph H. Johnson dated Jan. 10, 1907, and acknowledged before you as notary public; do you remember the time and circumstances of the execution and acknowledgment of that deed?

A. I remember that Mr. Johnson and Mr. Shannon came up to my office and that Mr. Shannon executed a deed to Mr. Johnson for certain property and that I took the acknowledgment of that deed, as to the exact time I could not say, but it was something over a year ago, I think.

Q. Do you know at whose suggestion the conveyance was made in the form of a warranty deed?

By Mr. ELDER.—Objected to as immaterial.

By Mr. DUDLEY.—Objected to, for if the witness was acting as an attorney for the parties of course whatever communications he received as an attorney would not be competent or proper.

(Testimony of Earl Sanders.)

By the REGISTER.———

A. I don't remember who brought up the matter, which one it was that told me to make the deed. [77]

Q. Was it one of the two?

A. My recollection is that they were the only two there.

Q. Did either Johnson or Shannon at that time seek your advice as an attorney regarding any other transactions in connection with the conveyance of this land?

By Mr. DUDLEY.—Objected to as incompetent, irrelevant and immaterial.

By Mr. ELDER.—Same objection.

By the REGISTER.—Objection overruled.

A. I think they did seek my advice with reference to some matters with reference to this land.

Q. After going into the matter was anything said with reference to a mortgage instead of a deed?

By Mr. ELDER.—Objected to as immaterial and irrelevant.

By the REGISTER.—Objection overruled.

A. I don't recollect that there was anything said; I don't remember it now.

Witness excused.

Protestee at this time moves the Honorable Register and Receiver that this protest or contest be dismissed for the reason that there has been no evidence whatever introduced that would in any way affect the entry made by John Shannon on this land. For the further reason that the evidence of the protestant clearly shows that John Shannon acted at all times

(Testimony of Earl Sanders.)

within his rights and that he had made no contract or no agreement to convey any part or any interest in this land, and it also shows that he did not convey any interest in this land by reason of any prior contract or agreement.

By Mr. DUDLEY.—We join in the motion for the reason that the evidence is insufficient to justify or support any findings of fraud on the part of Mr. Shannon to support or justify the cancellation of the entry.

By the REGISTER.—Before acting upon the motion I desire to [78] examine the transcript of the testimony.

By Mr. DUDLEY.—We offer in evidence the option of Dan McLaren of Feby. 14, 1907, which was marked for identification Protestant's Exhibit "C." We offer in evidence option of April 17, 1907, given by J. H. Johnson which was heretofore marked Claimant's Exhibit "I" for identification, and ask to have it marked Exhibit "B."

We ask to supply this office and have admitted in evidence the certified copies of the three deeds from Shannon to Johnson, from Johnson to Lammers and from Shannon to Lammers; we will have to order these certified copies from the Register and ask to have them forwarded to the land office direct.

We offer in evidence, provided we can find them, canceled checks from Lammers to Johnson, and Lammers to Morgan.

[Testimony of F. M. Dudley.]

F. M. DUDLEY, being duly sworn, testifies as follows:

I have been throughout this entire transaction, the attorney for McGoldrick Lumber Co. and Mr. Lammers. Mr. Lammers brought the matter of this purchase, as I remember it, into our office in April, 1907, for the purpose of having our firm examine the condition of the title to the land entered by Mr. Shannon prior to completing the contemplated purchase of the land. For that purpose my partner, Mr. W. E. Cullen, Jr., came to Coeur d'Alene to examine the records in the Land Office, after his return, from information given me, probably by Mr. Cullen, I learned of the existence of the English contest and also the Hamilton contest and was also advised at that time of the dismissal of both of these contests. I examined the abstract of title to this land and my attention was called to a record purporting to be a record of a contract between John Shannon and Wm. McCarter, by which Shannon was to convey to McCarter an undivided one-half interest in the lands which are the subject of this contest. The date of that and the facts referring to it are the same as shown in this abstract of title which has been introduced in evidence, altho the abstract I had [79] before me was a different abstract from this one.

Judge Morgan was in the office, as I recollect it, on 2 or 3 occasions concerning the title before we closed the transactions and I questioned him with

(Testimony of F. M. Dudley.)

reference to the title. I think it possible that he is the gentleman who gave me the information. I think he had with him the original dismissal of the Hamilton contest. I won't be positive whether it has been filed or not. The time the transaction was closed up, on April 25, Judge Morgan, Mr. Johnson, Mr. Shannon, Mr. Lammers, Mr. Cullen and myself were present at the office and at that time I learned, I think for the first time, possibly Mr. Johnson had advised me of it before, that the apparent deed to him had been given him to secure moneys which he said that Mr. Shannon owed him. I then told the parties that, under those circumstances, the instrument was a mortgage and I would require for Mr. Lammers a deed from Mr. Shannon in addition to the deed from Mr. Johnson. Mr. Morgan concurred in the view I took of the legal aspect and the deeds were drawn up in the office. I think I drew them myself. At that time I questioned Mr. Shannon closely with reference to this contract with McCarter which the abstract showed. Mr. Shannon assured me that that was not his contract, that he had never signed or executed such a contract and that if there were such a contract it was a forgery. I told the gentlemen that I would not O. K. the title for Mr. Lammers without an affidavit setting forth the statements which Mr. Shannon had made to me with respect to that matter and I also insisted, for the purpose of clearing up the record with Mr. Johnson's statement that the deed to him was to secure moneys loaned, was to be set forth in the shape of

(Testimony of F. M. Dudley.)

an affidavit, which affidavit would be placed of record and become a part of the chain of title. At that time it was stated by Judge Morgan, I think, or Mr. Lammers, in the presence of Mr. Shannon and Mr. Johnson, that the payments would be made in the shape of sums to be paid to the various creditors of Mr. Shannon [80] and the balance to be paid to Mr. Shannon, with the exception of \$1,000.00, which should be retained by Mr. Lammers until such time as the patent might issue. I think that some of the checks were drawn there at that time; I think Mr. Lammers there at that time gave Mr. Johnson a check for \$2,900.00 and some odd dollars and I think a check was also at that time given Judge Morgan for \$900.00; I will not be positive about that. I know that Mr. Shannon told us that he owed McCarter some \$600.00 and there was some other items; I am not positive but I think there was a memorandum of the sums there.

I concluded from Mr. Shannon's appearance that his memory was defective and it occurred to me as possible or probable, in view of the contract of record between Shannon and McCarter, that he might have made a contract of that kind and forgotten all about it, or that his signature might have been procured to the instrument at a time when he was under the influence of liquor, and he have no knowledge of the transaction. I then drew up, simply based on my suspicions as to what might be the facts of the case, the paper which has been marked Exhibit "B" for identification, and gave it to Mr. Lammers with

(Testimony of F. M. Dudley.)

a request that he forward it to the attorney, or the gentleman who I understood was acting as attorney for Wm. McCarter, Mr. R. E. McFarland, I think it was, but the statements made in that affidavit were made by him without any direct information on which to base the same. I stated simply what appeared to me might be a possible solution of the apparent discrepancy between Mr. Shannon's statements and affidavit and the existence of a contract between Shannon and McCarter on the record, if John Shannon was the same Shannon.

Cross-examination.

(By Mr. McFARLAND.)

Q. In your first statement, Mr. Dudley, you say that before this deal was consummated you ascertained that the English contest [81] had been dismissed? A. Yes.

Q. Don't you know, as a matter of fact, that the English contest was not finally dismissed until Dec. 16, 1907?

A. I don't know anything about that. I know that the letter had been received from the Commissioner of the General Land Office disposing of it, that is what we acted upon.

Q. At that time English had never been notified of that letter having been received, had he?

A. That I don't know.

Q. You never looked that up?

A. No, I simply had the Commissioner's letter.

Q. Now, all of these other matters that you have testified to with reference to what took place in your

(Testimony of F. M. Dudley.)

office in Spokane on April 25, were matters which they told you and conclusions which you drew from the appearance of the different parties, and nothing that you knew as a matter of fact, aside from the actual transactions that took place?

A. Not personal knowledge, of course, except from the statements and transactions, the gentlemen executed these affidavits, that is the affidavits of both Mr. Shannon and Mr. Johnson, I think I wrote both of those affidavits myself and I had the abstract before me which showed the existence of a contract of record, between some John Shannon and Wm. McCarter purporting to affect this land.

Q. Now, referring to Protestant's Exhibit "B" which you testified about and which you say you prepared, isn't it a fact that you sent this affidavit, or had it sent to McCarter, believing he would sign it if he received the \$600.00?

A. I sent it or had it sent to him believing that if it were true he would sign it. [82]

Q. Isn't it a fact that the affidavit was returned to you, as indicated in another of protestant's exhibits, and that you returned it a second time to him saying that you would not accept anything else than the signing of this affidavit?

By Mr. ELDER.—Objected to as not binding upon Mr. Shannon, irrelevant and immaterial.

By the REGISTER.—Answer the question. It will be considered only so far as it is competent.

A. Mr. Lammers sometime, I won't say the exact date, brought to me the letter of May 15, 1907,

(Testimony of F. M. Dudley.)

marked "Protestant's Exhibit 'G' for identification." On June 11th, 1907, our firm answered that letter and I have a carbon copy of the answer which states its contents.

By Mr. McFARLAND.—Protestant asks to have letter referred to by Mr. Dudley marked "Protestant's Exhibit 'I' for identification."

Protestant now offers in evidence letter marked "Protestant's Exhibit 'I' for identification."

By Mr. ELDER.—Objected to as irrelevant and not binding.

By the REGISTER.—The letter will be admitted to be considered so far as it is found to be relevant and material.

By Mr. McFARLAND.—Protestant also refers to Commissioner's letter "H" dated Dec. 16, 1907.

By Mr. DUDLEY.—We now renew our motion to dismiss the contest for the reason that there has been no evidence introduced that would in any way affect the entry made by John Shannon of this land, and for the reason that the evidence is insufficient to justify any finding of fraud on the part of John Shannon or to support or justify the cancellation of the entry.

CASE CLOSED. [83]

Exhibit "A" for Identification to Testimony Before Receiver [not Admitted]—Agreement, Dated September 24, 1908, Between John Shannon and Wm. McCarter.

Instrument Number 8838.

This agreement, made and entered into this 24th

day September, 1906, by and between John Shannon, of Kootenai County, State of Idaho, party of the first part, and William McCarter, of Kootenai County, State of Idaho, party of the second part,

WITNESSETH, that the said party of the first part for and in consideration of the sum of one thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, hereby agrees and binds himself, to convey to the said party of the second part, an undivided one-half interest in and to the S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Sec. 9, Tp. 44 N., R. 3 E., N. M., by good and sufficient warranty deed, as soon as he the said party of the first part, makes final homestead proof of the lands and premises and received his receiver's final receipt therefor.

IN WITNESS WHEREOF, said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN SHANNON. (Seal) [84]

State of Idaho,

County of Kootenai,—ss.

On this 24th day of September, in the year of 1906, before me, Edward P. Brennan, a Notary Public in and for the County of Kootenai, State of Idaho, personally appeared John Shannon, personally known to me to be the same person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and

year in this certificate first above written.

[Seal]

EDWARD P. BRENNAN,

Notary Public.

Recorded at the request of T. L. Quarles, Jan. 21, 1907, at 9 o'clock A. M., in Book "E" of Agreements, page 589, Records of Shoshone County, State of Idaho.

STANLEY P. FAIRWEATHER,

County Recorder.

State of Idaho,

County of Shoshone,—ss.

I, Stanley P. Fairweather, County Recorder in and for the County of Shoshone, State of Idaho, do hereby certify the foregoing to be a full, true and correct copy of an agreement, between John Shannon and William McCarter as the original instrument appears upon the records of said county, in Book "E" of Agreements, at page 589 thereof, at my office and in my custody.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal this 19th day of May, A. D. 1908.

STANLEY P. FAIRWEATHER,

County Recorder.

By _____,

Deputy. [85]

**Exhibit "B" to Testimony Before Receiver—
Affidavit of Wm. McCarter.**

State of Idaho,

County of Kootenai,—ss.

William McCarter, being first duly sworn, doth depose and say: That he is a citizen and resident of the

State of Idaho, residing at St. Maries, in Kootenai County, in said State. That he is the individual named as one of the parties to, and who executed that certain written contract dated September 24, 1906, and recorded in the office of the County Recorder of Shoshone County, Idaho, January 21, 1907, in Book "E" of Agreements, on page — thereof, whereby John Shannon agreed, for the considerations therein named, to convey to affiant an undivided one-half of the South Half (S. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) the Southwest Quarter (SW. $\frac{1}{4}$) of the Northeast Quarter (NE. $\frac{1}{4}$) and the Northeast Quarter (NE. $\frac{1}{4}$) of the Southwest Quarter (SW. $\frac{1}{4}$), of Section Nine (9), in Township Forty-four (44) North, of Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, as soon as said Shannon should make final homestead proof for said land and receive the receiver's final receipt therefor. That at the time of executing said contract the said Shannon was indebted to affiant in a large sum of money; and that affiant was very desirous of procuring some security for the payment thereof; and that affiant procured the signature of said Shannon to said contract solely for the purpose of holding the same as security by means of which he could compel said Shannon to pay such indebtedness; and that it was not the purpose or intention of affiant to ever assert any title to said lands, or to any interest therein, or in any therefor, under said contract. That affiant well knew, at the time of procuring said pretended agreement that the same was void and unenforceable, but that affiant believed

that he could, by means thereof, induce and compel said Shannon to pay to affiant [86] the indebtedness due to affiant from said Shannon. That at the time of executing and delivering said paper to affiant, the said Shannon had been drinking for many days; and was in such a condition, as the result of such drinking alcoholic drinks, that he, the said Shannon had no comprehension of his act, and thereafter had no recollection of executing or delivering such paper to affiant; and that the said Shannon has since believed, and now, as affiant is informed and believes, that he, said Shannon, never signed or delivered such contract, and that his signature thereto is a forgery. That it was never the purpose or intention of said Shannon to agree to convey to affiant said lands when he should enter the same, or any interest therein, or in any of them. That said paper was filed for record in the office of the county recorder of Shoshone County, Idaho, after affiant had been informed that said Shannon had conveyed said lands to one Joseph H. Johnson, for the purpose of using the same as a means whereby affiant could secure from said Shannon payment of the moneys owing by said Shannon to affiant.

That affiant never had any contract or agreement, direct or indirect, of any kind whatsoever, by which affiant was to receive, or by which said Shannon was to convey to affiant, or to anyone for the benefit of affiant, said lands, or any interest therein, or in any thereof, upon the entry of said lands by said Shannon under the provisions of the acts of Congress of the United States authorizing the sale of lands valu-

able for timber or stone; and that affiant has not now and never has had, any interest in or to said lands, or any thereof.

WM. McCARTER.

Subscribed and sworn to before me this --- day of April, A. D. 1907.

Notary Public in and for the County of Kootenai, Idaho. [87]

Exhibit "C" to Testimony Before Receiver [Option to D. J. McLaren, Dated February 14, 1907].

Spokane, Wash., Feb. 14, 1907.

I, the undersigned, D. J. McLaren, hereby certify that I have the power of attorney in the form of an option on the following described lands:

The S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 9 44, 3 East B. M., Shoshone County, Idaho, from J. H. Johnson, who is the present owner of record to above lands, and that I have this day for and in consideration of the sum of One (\$1.00) to me in hand paid, the receipt of which is hereby acknowledged, agreed to deliver the fee title to the above lands to R. C. Lammers, for a further consideration of \$8000.00 to be paid when Warranty Deed and Abstract is delivered.

DAN McLAREN.

Witness: ROY C. LAMMERS.

State of Washington,
County of Spokane,—ss.

I, W. E. Cullen, Jr., a Notary Public in and for said County and State, do hereby certify that on

this 9th day of March, A. D., personally appeared before me Dan McLaren to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Seal]

W. E. CULLEN, Jr.,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Recorded March 11, 1907, in Book "E" of Bonds and Agreements and Powers of Attorney, at page 626 thereof, records of Shoshone Co., Idaho. [88]

**Exhibit "D" to Testimony Before Receiver—
Affidavit [of John Shannon].**

State of Washington,
County of Spokane,—ss.

John Shannon, being first duly sworn, doth depose and say: That he is a citizen and resident of the State of Idaho, residing at Coeur d'Alene City, in said State. That he is the person who made entry for the south half (S. $\frac{1}{2}$) of the northwest quarter (NW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), and the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of Section Nine (9), in Township Forty-four (44) North of Range Three (3) East, B. M., in Shoshone County, Idaho, under the provisions of the Act of Congress of the United States authorizing the sale of lands valuable for timber and stone; and that he is the grantor of that certain deed dated January 16, 1907,

recorded January 22, 1907, in the office of the County Recorder of Shoshone County, Idaho, in Book 32 of Deeds, at page — thereof, by which affiant conveyed said lands to Joseph H. Johnson; that affiant has heard read the affidavit of said Joseph H. Johnson made this day for the purpose of inducing R. C. Lammers to purchase said lands; and that the facts as stated in said affidavit are true. That affiant's attention has been called to an Abstract of Title to said lands which shows, among other things, an agreement between affiant and one William McCarter, dated September 24, 1906, and recorded in the office of the County Recorder of Shoshone County, Idaho, January 21, 1907, in Book "E" of Agreements, on page — thereof, by which it is recited that affiant agrees to convey an undivided half interest in and to said lands to said William McCarter as soon as affiant should make final homestead proof of said lands and receive the receiver's receipt therefor; that in truth and in fact affiant never made or signed such agreement, or any agreement, to [89] convey said lands, or any thereof, or any interest therein, to anyone, and that if there is any agreement such as purports to be shown in such abstract signed in affiant's name, the name is a forgery.

JOHN SHANNON.

Subscribed and sworn to before me this 25th day of April, A. D. 1907.

[Seal]

W. D. CULLEN, Jr.,
Notary Public.

Recorded Aug. 7th, 1907, in Book "P," Misc., page 393 thereof. [90]

**Exhibit "E" to Testimony Before Receiver—
Affidavit [of Joseph H. Johnson].**

State of Washington,
County of Spokane,—ss.

Joseph H. Johnson, being first duly sworn, doth depose and say: That *is* is a resident and citizen of the State of Idaho, residing at Coeur d'Alene City, in said State. That he is the Joseph H. Johnson who is named as grantee in that certain deed dated January 16, 1907, executed by John Shannon as grantor, and recorded January 22, 1908, in the office of the County Recorder of Shoshone County, Idaho, in Book 32 of Deeds, at page —, by which deed said John Shannon conveyed to affiant the south half (S. $\frac{1}{2}$) of the Northwest quarter (NW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) and northeast quarter (NE. $\frac{1}{4}$) of southwest quarter (SW. $\frac{1}{4}$) of section Nine (9) in Township forty-four (44) north of range three East, B. M., in Shoshone County, Idaho; that said land was conveyed to affiant on the same day that said John Shannon made entry of the same, but that there was prior to the making of said entry, no contract or agreement of any kind whatsoever, direct or indirect, by which affiant was to receive said land, or any part thereof, to affiant or to anyone for the use or benefit of affiant. That affiant had loaned money to said Shannon and said Shannon was indebted to affiant at the time of making said entry, and that

after said entry had been made affiant requested said Shannon to convey said land to him, affiant, to secure affiant for the sums of money owing by said Shannon to affiant, and that said Shannon did so, and that the said deed from said Shannon to affiant was in truth and in fact a mortgage to secure to affiant the payment of said indebtedness. That this affidavit is made for the purpose of removing objections to the title to said property raised for the attorney for R. C. Lammers who is contemplating the purchase of said lands, and for the purpose of inducing said party to purchase said lands.

JOSEPH H. JOHNSON.

Subscribed and sworn to before me this 25th day of April, 1907.

[Seal]

W. E. CULLEN, Jr.,

Notary Public.

Recorded Aug. 7, 1907, in Book "P" Misc., page 392 thereof. [91]

**Exhibit "H" to Testimony Before Receiver—
Not Admitted [Abstract of Title].**

ABSTRACT OF TITLE

To the South half of the Northwest quarter (S. $\frac{1}{2}$ NE. $\frac{1}{4}$) Southwest quarter of Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) Northeast quarter of Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Nine (9), in Township Forty-four (44) North, of Range Three (3) East of the Boise Meridian, in Shoshone County,

State of Idaho, containing 160 acres. [92]

AGREEMENT.

Dated, September 24, 1906.

Recorded, Jan. 21, 1907.

Book "E," Agreements, page 589.

JOHN SHANNON

and

WILLIAM McCARTER.

Duly acknowledged September 24, 1906, before Edward P. Brennan, a Notary Public in and for the County of Kootenai, State of Idaho. (Seal.)

WITNESSETH: That the said party of the first part for and in consideration of the sum of One Thousand Dollars to him in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, hereby agrees and binds himself to convey to the said party of the second part an undivided one-half interest in and to the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Sec. —, Tp. 44 N., R. 3 E., B. M., by and good sufficient warranty deed, as soon as he, the said party of the first part, makes final homestead proof of the said lands and premises and received his receiver's final receipt therefor. [93]

WARRANTY DEED.

Dated, January 16th, 1907.

Recorded Jan. 22, 1907.

Deed Book "32," page 293.

Consideration, \$9,000.00.

JOHN SHANNON (Single),

Grantor,

to

JOSEPH H. JOHNSON,

Grantee.

Witnesses, Two.

Duly acknowledged January 16, 1907, before Earl Sanders, a Notary Public, in and for the County of Kootenai, State of Idaho. (Seal.)

"Grant, bargain, sell, remise, release, alien and confirm."

Covenants of general warranty.

DESCRIPTION.

All the following described lot, piece or parcel of land, situated in the County of Shoshone and State of Idaho and known and described as follows, to wit:

South half of the northwest quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$), Southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$) and northeast quarter of southwest quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North of Range Three (3) East of the Boise Meridian, situated in the County of Shoshone, State of Idaho, con-

taining one hundred and sixty (160) acres. [94]

TAXES. JUDGMENTS AND LIENS

Not assessed on rolls of	None.
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Shoshone County.

State of Idaho,

County of Shoshone,—ss.

I, Stanley P. Fairweather, County Recorder in and for the County of Shoshone, State of Idaho, do hereby certify that the foregoing Abstract of Title, to the S. 1/2 NW. 1/4, SW. 1/4 NE. 1/4, NE. 1/4 of SW. 1/4 of Section Nine in Township Forty-four North of Range Three East, Boise Meridian, consisting of TWO (2) items, is a full, true and correct abstract of title to said lands as the same appear upon the records of said county, and that no conveyances affecting the title to said lands are of record other than those set forth in this abstract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Wallace, Idaho, this 22d day of January, A. D. 1907, at the hour of 10 o'clock A. M.

STANLEY P. FAIRWEATHER. [95]

Spokane, Wash., Feb. 14th, 1907.

I, the undersigned, D. J. McLaren, hereby certify that I have the power of attorney in the form of an option on the following described lands:

The S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 9, 44, 3 East, B. M., Shoshone, Idaho, from J. H. Johnson, who is the present owner of record to above lands and that I have this day for and in consideration of the sum of One (\$1.00), to me in hand paid, the receipt of which is

hereby acknowledged, agreed to deliver the fee title to the above lands to R. C. Lammers, for a further consideration of \$8,000.00, to be paid when Warranty Deed and Abstract is delivered.

DAN McLAREN.

Witness: ROY C. LAMMERS.

State of Washington,
County of Spokane,—ss.

I, W. E. Cullen, Jr., a Notary Public in and for said County and State, do hereby certify that on this 9th day of March, A. D. 1907, personally appeared before me Dan McLaren, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Seal]

W. E. CULLEN, Jr.,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Recorded March 11, 1907, in Book "E," of Bonds and Agreements and Powers of Attorney, at page 626 thereof, records of Shoshone Co., Idaho. [96]

RECEIVER'S RECEIPT.

Dated January 16, 1907.

Recorded, August 7, 1907.

Book "P" Misc., page 391.

Consideration, \$400.00.

UNITED STATES OF AMERICA,

Grantor,

vs.

JOHN SHANNON,

Grantee.

No. 2500.

Being in full for S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of Section No. 9 in Township No. 44
N. of Range No. 3 E., B. M. Containing 160 acres
and no hundredths at \$2.50 per acre. [97]

WARRANTY DEED.

Dated April 25th, 1907.

Recorded, August 7, 1907.

Deed Book "34," page 485

Consideration, \$1.00.

JOSEPH H. JOHNSON (a Married Man),

Grantor,

to

R. C. LAMMERS,

Grantee.

Duly acknowledged April 25, 1907, before James
H. Harte, a Notary Public in and for Kootenai
County, State of Idaho. (Seal.)

“Grant, bargain, sell, remise, release, alien and confirm.”

Covenants of general warranty.

DESCRIPTION.

All the following described lots, pieces or parcels of land, situated in the County of Shoshone, and State of Idaho, and known and described as follows, to wit:

South half of the northwest quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$), southwest quarter of the *northeast* (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the northeast quarter of the southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North, of Range Three (3) East of Boise Meridian, containing one hundred and sixty acres according to the Government survey thereof.

(That the said Grantor has never lived upon said lands or made the same his home or together with his wife has he claimed the same as a homestead at any time.) [98]

WARRANTY DEED.

Dated April 25th, 1907.

Recorded, August 7th, 1907.

Deed Book “34,” page 486.

Consideration, \$1.00.

JOHN SHANNON, Unmarried,

Grantor,

to

_____ ,

Grantee.

Duly acknowledged April 25, 1907, before W. E.

Cullen, Jr., a Notary Public in and for Spokane County, State of Washington. (Seal.)

“Grant, bargain, sell, remise, release, alien and confirm.”

Covenants of general warranty.

DESCRIPTION.

All the following described lot, piece or parcel of land, situated in the County of Kootenai and State of Idaho, and known and described as follows, to wit:

South half of the northwest quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$), southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the northeast quarter of the southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of section nine (9), township forty-four (44) north of range three (3) East, Boise Meridian, containing one hundred sixty (160) acres according to the Government survey thereof. [99]

TAXES.

JUDGMENTS & LIENS.

Not assessed on rolls
of Shoshone Co.

None.

State of Idaho,
County of Shoshone,—ss.

I, Stanley P. Fairweather, County Recorder in and for the County of Shoshone, State of Idaho, do hereby certify that the foregoing pages, numbered from one (1) to six (6), inclusive, contains a full, true and correct Abstract of Title to the real property described in caption hereof, subsequent to January 22d, 1907 (that being the date of the certificate to the abstract of title of which this is a continuation) as appears from the official records of Shoshone County, Idaho.

And further certify that there are according to county indexes, no judgments, suits pending or liens of any kind against any of the within named grantees which are liens on the lands described herein, in any court of record in Shoshone County, that there are no taxes or assessments due or unpaid, that no tax deeds have been given thereon, and that there are no tax sales of said property unredeemed, during the period covered by this examination, viz.: From January 22, 1907, to January 6th, 1908, at the hour of five o'clock P. M.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal at my office in Wallace, Idaho, this 6th day of Jan., 1908.

STANLEY P. FAIRWEATHER,
County Recorder. [100]

Exhibit "I" [to Testimony Before Receiver—Option Dated April 17, 1907—J. H. Johnson to R. C. Lammers].

Coeur d'Alene, Idaho, April 17th, 1907.

For and in consideration of the sum of \$1.00 to me in hand paid by R. C. Lammers, the receipt whereof is hereby acknowledged, I hereby give the said R. C. Lammers the exclusive option for a period of ten (10) days from the date hereof to complete the title and make the transfer to purchase at the price of eight thousand dollars the following described lands, to wit:

South half of the northwest quarter, southwest quarter of the northeast quarter and northeast quarter of the southwest quarter of section nine (9) in township forty-four (44) north of range three (3)

east, B. M., Shoshone County, Idaho. Time being the essence of this option.

(Signed) J. H. JOHNSON. [101]

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Coeur d'Alene, Idaho.

Involving the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ & the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ & NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 9, T. 44 N., R. 3 E., B. M.

CHARLES J. KINSOLVING,

Contestant,

vs.

JOHN SHANNON,

Contestee.

DECISION OF THE REGISTER AND
RECEIVER.

On January 16th, 1907, final cash certificate No. 2300 was issued to John Shannon for the above-described land, the application to purchase the same under the timber and stone act having been filed in this office on September 26th, 1906.

The records of this office show that this land was formerly held by Shannon under homestead entry made July 17th, 1905, and that on September 25th, 1906, he offered proof in support of his application to commute said homestead entry. Said commutation proof was not completed for the reason that Shannon's testimony showed that he had made no cultivation of the land.

On September 26th, 1906, he relinquished said homestead entry and filed an application to purchase said land under the timber and stone act.

On July 16, 1907, the above-named contestant filed in this office an affidavit of contest against Shannon's entry under the timber and stone act, alleging

that on or about the 17th day of July, 1905, at the Coeur d'Alene, Idaho, land office, John Shannon made homestead entry for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 9, in Township 44, North of Range 3 East, B. M., and that thereafter the said Shannon made application to offer final proof on said homestead as a commutation cash entry which said application was duly and regularly published; that on the day set for offering said final proof, to wit, on the 26th day of September, 1906, the said Shannon relinquished said land to the government of the United States, and thereafter, on the said 26th day of September, 1906, made application, under the timber and stone act, to purchase the same, which said application and certificate is number 2500; that on the 16th day of January, 1907, said Shannon offered and [102] submitted his proof for said land, and, after the same had been submitted, your Receiver of the Coeur d'Alene, Idaho, Land Office, issued to him a receipt and certificate of purchase Number 2500.

That on the 24th day of September, 1906, the said John Shannon made, executed and entered into a written agreement with one William McCarter, under and by the terms of which he, the said Shannon was to deed and convey to the said William McCarter an undivided one-half inter-

est in and to the land sought to be purchased as aforesaid, when he, the said Shannon, had submitted his final proof and received the receiver's receipt therefor; that said written contract and agreement was recorded in the office of the County Recorder of Shoshone County, Idaho, on the 21st day of January, 1907, in Book "E" of Agreements.

That after said Shannon had submitted his final proof and received your Receiver's receipt therefor, he, the said Shannon, made and executed deed conveying said land to one Joseph H. Johnson, who, as affiant is informed and believes, subsequently conveyed said land to Roy C. Lammers and the McGoldrick Lumber Company, a corporation; that in paying to the Government of the United States the purchase price for said land, the money therefor was furnished to the said Shannon by other parties in consideration of the said Shannon giving to party furnishing said money a part of the consideration which he was to receive from the said Roy C. Lammers and the McGoldrick Lumber Company; that when the consideration for said conveyance as aforesaid was paid, the said Shannon did not receive more than a one-third thereof, the balance having been paid to the parties who had furnished him the money to make final proof.

Affiant further alleges upon information and belief, that the consideration paid by said Roy C. Lammers and the McGoldrick Lumber Company, for said land, was the sum of Eight Thou-

sand Dollars (\$8000.00) and that the said Shannon did not receive more than Two Thousand Dollars (\$2000.00) thereof.

That all of the matters herein alleged are matters of record within the United States Land Office and the office of the County Recorder of Shoshone County, Idaho, and are within the knowledge of the special agents representing the Government of the United States.

On account of the matters and things above set forth affiant alleges, that said timber and stone entry No. 2500 was made for speculative purposes and not for the sole and exclusive benefit of said applicant, John Shannon; and that said John Shannon, by reason of his agreements and contracts as aforesaid, did not receive the full consideration and value of said land.

This affidavit was forwarded to the Commissioner of the General Land Office and by letter "R" dated December 17th, 1907, the Assistant Commissioner of the General Office directed that the contestant be allowed thirty days in which to appear and apply for notice and proceed with the contest. Notice of said letter was served on the contestant and application for notice of hearing was duly made by him. [103]

On February 28th, 1908, notice of hearing was issued to said parties citing them to appear at the local land office on May 13th, 1908, to submit testimony touching allegations of the contest affidavit. Service of the notice of hearing was made by publication.

Two continuances were granted in this case and

the taking of testimony began on May 21st, 1908. Kinsolving and Shannon appeared in person and by counsel, Kinsolving being represented by S. L. McFarland and Shannon by Robert H. Elder. Roy C. Lammers, who is shown to have purchased the land from Shannon for the McGoldrick Lumber Company and F. M. Dudley, appeared as counsel for Lammers and said company. It seems to us that the charge made in the contest affidavit of a contract made by Shannon, with one William McCarter, can hardly be considered in this case since the allegations refer to an alleged agreement in regard to the perfecting of his homestead entry, but even if it could be considered in this case we consider the evidence as hardly sufficient to establish the fact that such a contract was entered into by Shannon. There are certain circumstances, however, that point very strongly to the fact that such an agreement was made between Shannon and McCarter.

We think that the principal, if not the only, question to be determined in this case is whether or not "said timber and stone entry No. 2500 was made for speculative purposes and not for the sole and exclusive benefit of said applicant, John Shannon." The evidence shows that on the day on which Shannon made his final entry under the timber and stone act, he executed and delivered a deed for all of the land entered by him to Joseph H. Johnson for the expressed consideration of \$9,000.00. This deed Johnson claims to have been given to him for the purpose of securing the payment of certain amounts of money which were owing to him at that time by Shannon.

Just what was the aggregate of such indebtedness Johnson himself was not able to state, but according to his claim the indebtedness was for bills contracted by Shannon at Johnson's lodging-house and bar and for various amounts [104] of money alleged to have been loaned to Shannon by Johnson. Altho Johnson claims this deed was in fact a mortgage he appears to have given at least two options for the purchase of said land, one to Dan McLaren dated February 14th, 1907, and the other to Roy C. Lammers dated April 17, 1907. The latter option finally resulted in the sale of the land to Lammers on April 25th, 1907, for \$8,000.00.

At the time of the consummation of this sale to Lammers, Lammers, at the request of Shannon, paid to Johnson the sum of \$2,939.00 and to other persons various amounts and paid to Shannon himself, only \$1,757.00. \$1,000.00 of the purchase price was withheld by Lammers to protect himself against possible difficulty in obtaining patent for the land. It does not satisfactorily appear in the evidence what was the basis of the claim of Johnson against Shannon for the sum of \$2,939.00. That Shannon could have had credit for an amount of lodging and liquor in one year's time sufficient to have made anything like such a claim as this against him is incredible and it is equally incredible that Johnson would have loaned, without security, to such a man as Shannon, any such large amount of money as this. Shannon is an ignorant man who has still further incapacitated himself by the excessive use of liquor. This is shown

by Johnson's testimony at page 43 of the transcript, which is as follows:

"Q. Mr. Johnson, I believe you stated that Mr. Shannon used liquor and has since you have known him, very excessively?

A. Yes, sir.

Q. I will ask you whether or not that his excessive use of liquor has impaired his memory and mental faculties.

A. I think so, yes."

If Shannon did in fact obtain from Johnson, prior to his timber proof, any such sum of money as Johnson claims to have furnished him, it is our opinion that this money was used in making his final proof and purchase of the land.

We do not find any direct evidence showing that an agreement between Shannon and anyone else prior to the filing of his timber [105] application, or even prior to the submitting of his proof, had been entered into to convey all or any portion of the land or to give anyone any interest therein, but in the light of his subsequent actions or acts we are inclined to believe that there was such an understanding and that his conveyance of the land immediately after proof was pursuant to such an agreement. Shannon had no recollection of making any conveyance immediately after his proof and it seems to us probable that at the time of making an agreement to convey, if such an agreement was made prior to proof, he may have been in such condition as not to show what he was doing. It is impossible for us to read the evidence in this case without feeling certain that

Shannon was the victim of someone stronger and wiser than he. We think the record will sustain the view that the entry was made for speculative purposes and not for the sole and exclusive benefit of the applicant and for this reason we recommend that the entry be cancelled.

R. M. DUNN,

Register.

WILLIAM ASPLEY,

Receiver. [106]

Exhibit "G" [Letter, December 14, 1909, Register to McGoldrick Lumber Co.].

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE.

Coeur d'Alene, Idaho.

0668

December 14, 1909.

McGoldrick Lumber Company,
Spokane, Wash.

In reference to case of Kinsolving vs. Shannon, Lammers and McGoldrick Lbr. Co. involving Shannon's T. & S. application.

You are advised that under date of May 29, 1909, the Assistant Commissioner of the General Land Office affirmed the decision of this office and held the entry for cancellation.

Sixty days from notice are allowed within which to appeal from his decision to the Secretary of the Interior; and upon your failure to take action within the time specified the case will be reported for appropriate action.

A copy of the decision is inclosed.

Very respectfully,

W. H. BATTING,

Register.

Notice this day to Lammers and Shannon. [107]

**[Opinion of Assistant Commissioner, General Land
Office, May 29, 1909.]**

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., May 29, 1909.

Held for Cancellation. Affirmed.

CHARLES J. KINSOLVING,

vs.

JOHN SHANNON, ROY C. LAMMERS, Mc-
GOLDRICK LUMBER CO.

Register and Receiver,

Coeur d'Alene, Idaho.

Sirs:

On September 26, 1906, John Shannon filed his timber and stone application for the purchase of the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, T. 44. N., R. 3 E., B. M., upon which he made proof and payment and received Cash Certificate No. 2500 on January 16, 1907.

On July 16, 1907, Charles J. Kinsolving filed his affidavit of contest against said entry, charging that the same had not been made for the sole use and benefit of Shannon but for speculative purposes and stating in detail the facts upon which the charge was based, which need not be here repeated as they are substantially embodied in the synopsis of the testi-

mony set forth below. A hearing upon Kinsolving's affidavit was ordered by letter "H" of December 17, 1907, and pursuant to notice personally served, the parties appeared in person and by attorney before you on May 21, 1908, and submitted testimony. Roy C. Lammers, who is shown to have purchased the land from Shannon for the McGoldrick Lumber Company, and the said McGoldrick Lumber Company also appeared and participated in the trial. From your decision recommending the cancellation of the entry, the defendants have appealed to this office.

The facts disclosed by the record admit of no doubt as to the correctness of your decision. Shannon made a homestead entry for the land in controversy on July 17, 1905, entered into a written [108] agreement on September 24, 1906, with one McCarter to convey to the latter a one-half interest therein, offered commutation proof on September 25, 1906, which was not completed for the reason that his testimony showed no cultivation of the tract, and on September 26, 1906, he relinquished said entry and made the one under consideration.

On the day upon which he submitted proof on the latter entry, Shannon conveyed the land by deed to one Johnson, a saloon and lodging-house keeper. Shannon appears to have had no knowledge before execution either of this deed or of the agreement with McCarter above referred to. He is without means, drunken, imbecile and, clearly, the pliant tool of stronger minds that have used him in the attempt to acquire title to this land. Johnson's testimony as to his transaction with Shannon bears every earmark

of perjury and fraud. Though he insisted that the deed from Shannon to himself was merely a mortgage to secure an indebtedness, he could not state the amount of such indebtedness nor would he venture to swear that it amounted to \$1,000, notwithstanding the fact that from the proceeds of the subsequent sale of the land to Lammers as agent of the McGoldrick Lumber Company, he retained the sum of \$2,939 as his share of the booty and \$600 more went to McCarter, who was not present at the hearing. Of the \$8,000 for which the land was sold, Shannon received \$1,757. No explanation of the source of the money with which the entryman paid the purchase price is offered by the testimony, except his statement that he received five one hundred dollar bills from a brother by ordinary mail.

While there is no direct evidence of any agreement to convey this land having been made by Shannon prior to his purchase thereof, the circumstantial evidence that the entry was not made for his sole use and benefit is convincing.

Your decision is affirmed subject to defendants' right of appeal to the Department.

So advise the parties and in due season report.

Respectfully,

Assistant Commissioner. [109]

**Exhibit "H" [Decision, May 10, 1910, First
Assistant Secretary].**

**DEPARTMENT OF THE INTERIOR.
WASHINGTON.**

May 10, 1910.

E-3255.

"H." 0668, Coeur d'Alene,
T. & S. C. C. 2500 Cancellation.
Appeal. Affirmed.

CHARLES J. KINSOLVING

vs.

**JOHN SHANNON, ROY C. LAMMERS, Mc-
GOLDRICK LUMBER CO.**

The Commissioner of the
General Land Office.

Sir:—

Roy C. Lammers and McGoldrick Lumber Company, being the real parties in interest as transferees, have appealed to the Department from your decision of May 29th, 1909, sustaining the action of the local officers and holding for cancellation timber and stone cash entry number 2500 based upon the timber and stone application of John Shannon, filed September 26, 1906, for the purchase of the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, T. 44 N., R. 3 E., B. M., Coeur d'Alene, Idaho land district. Proof was duly submitted, payment made, and cash certificate number 2500 issued to John Shannon, January 16, 1908.

July 16, 1907, Charles J. Kinsolving filed his affi-

davit of contest against said entry, charging that same had not been made for the sole use and benefit of Shannon, but for speculative purposes, and stating in detail the facts upon which the charge was based.

Hearing upon Kinsolving's affidavit was ordered by your office letter "H," December 17, 1907. Notice was served upon the parties in interest, including Roy C. Lammers and the McGoldrick Lumber Company, and the hearing took place before the local officers in May, 1908, all the parties in interest appearing either in person [110] or by counsel with witnesses and submitting testimony.

The record has been carefully examined in connection with the briefs filed upon this appeal and no reason is found to differ from the concurring conclusions of your office and the local officers that it is shown by the evidence that this entry was made for speculative purposes and not for the sole and exclusive benefit of the applicant. It is true that the cancellation of this entry involves the loss of considerable money to the real party in interest—the McGoldrick Lumber Company, but the Department is convinced from the circumstances disclosed by the record that said company, through its acting agents, had before making purchase of this claim knowledge of facts sufficient to put it upon inquiry, by which it could have easily ascertained the true condition of affairs in regard to this entry. In fact, it is difficult to believe that the persons making the purchase for said company were not aware of the wrongful conditions concerning this entry before making purchase of the land embraced therein.

Your decision is accordingly affirmed and the papers are herewith returned.

Very respectfully,

Signed: FRANK PIERCE,

First Assistant Secretary.

[Endorsed]: Filed Oct. 9, 1911. A. L. Richardson,
Clerk. [111]

*In the Circuit Court of the United States for the
Ninth Circuit, District of Idaho, Northern Divi-
sion, Holding Terms at Coeur d'Alene.*

McGOLDRICK LUMBER CO.,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING (Whose Real Name is Un-
known), His Wife; MILWAUKEE LUMBER
COMPANY, a Corporation, JOHN DOE
LUNDQUIST (Whose True Name is Un-
known), and RICHARD ROE LINDQUIST
(Whose True Name is Unknown), JOHN
DOE (Whose Real Name is Unknown), and
RICHARD ROE (Whose True Name is Un-
known),

Defendants.

Amended and Supplemental Bill of Complaint.

AMENDED AND SUPPLEMENTAL BILL OF
COMPLAINT OF THE McGOLDRICK LUM-
BER CO., A CORPORATION, EXHIBITED
AGAINST THE DEFENDANTS ABOVE
NAMED, Charles J. Kinsolving and Jane Doe

Kinsolving (Whose Real Name is Unknown), His Wife; Milwaukee Lumber Company, a Corporation; John Doe Lundquist (Whose True Name is Unknown); and Richard Roe Lindquist (Whose True Name is Unknown); John Doe, (Whose True Name is Unknown), and Richard Roe (Whose True Name is Unknown).

To the Honorable Judges of the Circuit Court of the United States of the Ninth Circuit, in and for the District of Idaho, Northern Division, in Equity Sitting:

The McGoldrick Lumber Co., a corporation of the State of Washington and a resident and citizen of the said State, brings this its amended and supplemental bill of complaint against Charles J. Kinsolving, and Jane Doe Kinsolving (whose real name is unknown), his wife; Milwaukee Lumber Company, a [112] corporation; John Doe Lundquist (whose real name is unknown); Richard Roe Lindquist (whose real name is unknown); John Doe (whose real name is unknown), and Richard Roe (whose real name is unknown), defendants, all citizens of the State of Idaho, residing at St. Maries, Kootenai County, Idaho, and respectfully shows unto your Honors:

I.

That the above-named complainant, McGoldrick Lumber Co., is a corporation organized and existing under and virtue of the laws of the State of Washington, and now is, and during all the times hereinafter mentioned was, a citizen and resident of the said State of Washington, and that on the — day

of October, A. D. 1911, your orator exhibited its original bill of complaint in this Honorable Court against Charles J. Kinsolving and Jane Doe Kinsolving (whose real name is unknown), his wife, being citizens and residents of the State of Idaho, living and residing at St. Maries in the County of Kootenai, and State of Idaho, alleging that one John Shannon being then and there a citizen and resident of the State of Idaho, and a citizen of the United States, had on the 26th day of September, 1906, made entry under the laws of the United States for cash purchase of timber and stone lands, being the Act of Congress of June 3, 1878, to the South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), and the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, and had on the 16th day of January, 1907, made his final proof before the Register of the Land Office at Coeur d'Alene, Idaho, and had received from the Receiver of the United States Land Office at Coeur d'Alene, Idaho, Receiver's Receipt for the said land numbered "Timber & Stone Entry No. 2500," [113] and had thereafter and on the 25th day of April, 1907, sold and transferred by warranty deed to your orator the said land for the sum of *Eight Thousand* (\$8,000.00), and that your orator was then and there a *bona fide* purchaser of said land, and that thereafter and on the 16th day of July, 1907, the above-named defendant, Charles J.

Kinsolving, instituted a contest against the entry of the said lands by the said John Shannon upon the ground that the same was made for speculative purposes and not for the sole and exclusive benefit of the said applicant, John Shannon, which said contest the register and receiver of the said United States Land Office at Coeur d'Alene, Idaho, on or about the — day of —, 1908, sustained, from which said decision your orator duly appealed to the Honorable Commissioners of the General Land Office, and to the Honorable Secretary of the Interior, who affirmed the decision of the register and receiver of the said United States Land Office at Coeur d'Alene, Idaho, and cancelled the said entry of the said John Shannon, and thereafter and on the 27th day of March, 1911, the United States of America by and through its legally constituted officers made and caused to be delivered to said defendant, Charles J. Kinsolving, a patent of the South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North, Range Three (3) E., B. M., in Shoshone County, Idaho; that thereupon your orator exhibited a bill of complaint before your Honorable Court claiming that the register and receiver of the local land office had erred in law in making and rendering their said decision and that the Honorable Commissioner of the General Land Office and the Honorable Secretary of the Interior had each erred in law in affirming the deci-

sion of the said register and receiver of the said United States Land Office at Coeur d'Alene, Idaho, all as set forth in said original bill of complaint of your orator to which [114] reference is duly made as if the said bill were incorporated herein and praying that it be decreed by your Honors that your orator is the owner of the said South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), of Section Nine (9), Township Forty-four (44) North, Range Three (3) East, B. M., in Shoshone County, Idaho, and that the said defendants, Charles J. Kinsolving, and Jane Doe Kinsolving (whose real name is unknown), his wife, be decreed to be the owners of the title by, through and under the patent of the United States so far as the same relates to the said land in trust for your orator this complainant, and for its uses and benefits, and that the said defendants be required by said decree to convey to your orator, its successors and assigns, said premises, and the whole thereof, and that said title of said defendants in and to said property existing under and by virtue of the said patent, be cancelled and *and* that your orator be permitted to make application for patent to the said premises under the provisions of the laws of the United States covering the entry made by the said John Shannon.

II.

That the above-named defendant, Milwaukee Lumber Company, is a corporation organized and

existing under and by virtue of the laws of the State of Idaho, with its principal place of business at St. Maries, in the County of Kootenai, in said State, and that the same now is, and during all the times hereinafter mentioned was, a citizen and resident of said State of Idaho.

III.

That the above-named defendants, Charles J. Kinsolving and Jane Doe Kinsolving (whose real name is unknown), his wife; Milwaukee Lumber Company, a corporation; John Doe Lundquist [115] (whose real name is unknown); and Richard Roe Lindquist (whose true name is unknown); and John Doe (whose true name is unknown), and Richard Roe (whose true name is unknown), are, and each of them is, a citizen and resident of the State of Idaho, living and residing at St. Maries, in the County of Kootenai, in the State of Idaho.

IV.

That on the 15th day of September, 1911, the above-named defendant, Charles J. Kinsolving, pretended to transfer and convey by quitclaim deed the above-described property to the above-named defendant, the Milwaukee Lumber Company, which said deed was recorded in the County of Shoshone and State of Idaho, in Book 42, page 149 of the records of said County of Shoshone, on the 29th day of September, 1911.

But your orator alleges that the said transfer was without consideration and was made in fraud of the rights of your orator in the premises, and was made by and through a conspiracy entered into by the said

Charles J. Kinsolving and the said Milwaukee Lumber Company in an effort to defeat the rights of your orator in the premises.

V.

Your orator further shows unto your Honors that the said above-described land has thereon a large amount of white pine and other timber suitable for the purpose of manufacturing into logs, and is valuable solely for its said timber, and that the value of said land is largely destroyed if the said timber is cut and removed therefrom.

VI.

That on or about the 1st day of October, 1911, the said Charles J. Kinsolving and the said Milwaukee Lumber Company to carry out their said conspiracy and to defeat the rights of your orator in the premises entered upon the said land by and through his and their agents, contractors, servants [116] and employees, being the above-named defendants, Charles J. Kinsolving and Jane Doe Kinsolving (whose true name is unknown), his wife; Milwaukee Lumber Company, a corporation; John Doe Lundquist (whose true name is unknown); Richard Roe Lindquist (whose true name is unknown); John Doe (whose true name is unknown), and Richard Roe (whose true name is unknown), and commenced to cut and remove the timber from the said land and to log the same for the purpose of converting the said timber into lumber and destroying the value of the said land so far as your orator is concerned, and are now engaged in cutting and removing the timber from the said land, and in logging the same for the

purpose of manufacturing the said timber into lumber, and threaten to and will continue to so cut and remove the timber from the said land and to log the same for the purpose of manufacturing the same into lumber unless restrained by your Honors from so doing.

VII.

And your orator further shows that the said defendant, Charles J. Kinsolving, is a man of small means, if any, and is wholly unable to respond to complainant in damages if he be permitted to cut and remove the said timber, and that he is the party mainly interested in the same under his agreement with the Milwaukee Lumber Company.

VIII.

And your orator further shows that it is a corporation owning and possessing large amounts of land in the State of Idaho, and fully able to respond in damages to the said defendants for any harm or damage that may be done if an injunction be issued restraining the said defendants from cutting and removing the said timber until the determination of this action as to the title to the said land, and that all of the threats, acts, doings and pretenses of the said defendants hereinbefore set forth are contrary to equity and good conscience and tend to the manifest wrong, injury and [117] oppression of your orator in the premises, and that if an injunction is not issued to your Honors, the value of the said land to your orator should your Honors recover in this action will be wholly destroyed.

IN CONSIDERATION WHEREOF, and for as

much as your orator is remediless in the premises, at and by the strict rules of common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable;

May it please your Honors to grant unto your orator a writ of subpoena to be directed to the said Milwaukee Lumber Company, an Idaho corporation, and a citizen and resident of the said State of Idaho, and to John Doe Lundquist (whose true name is unknown); Richard Roe Lindquist (whose true name is unknown); John Doe (whose true name is unknown) and Richard Roe (whose true name is unknown), all citizens and residents of the said State of Idaho, residing at St. Maries, Kootenai County, Idaho, commanding them and each of them at a certain time and at a certain penalty therein to be limited, to personally appear before your Honors, and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived); and further to stand to and abide such further order, direction or decree herein as to your Honors shall seem meet and proper, and particularly to the end that the said defendant, Milwaukee Lumber Company, an Idaho corporation, may show why your orator may not have the relief prayed for and give answer, but not under oath, fully and truly to all the matters herein stated, and that your orator may have the same relief against the Milwaukee Lumber Company as it would be entitled to against the said defendant Charles J. Kinsolving, had he not transferred the said property to the [118] said

Milwaukee Lumber Company.

That it may be decreed by your Honors that your orator is the owner of the said South Half of the Northwest Quarter (S. $\frac{1}{2}$ of NW. $\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of Section Nine (9), Township forty-four (44) North, Range Three (3) East of the Boise Meridian, in Shoshone County, Idaho, and that the defendant Charles J. Kinsolving and Jane Doe Kinsolving, his wife, and the said Milwaukee Lumber Company, be decreed to be the holders of the title by, through and under the patent of the United States so far as the same relates to the said land in trust, however, for your orator, this complainant, and for its uses and benefit, and that the said defendants be required by said decree to convey to your orator, its successors or assigns, said premises and the whole thereof, and that said title of said defendants in and to said property existing under and by virtue of the said patent be cancelled and annulled, and that your orator be permitted to make application for patent to the said premises under the provisions and laws of the United States covering the entry hereinabove set forth.

That the defendants and each of them be restrained and enjoined by order of this Court from encumbering or disposing of said premises, or any interest therein pending the final determination of this action, and may it please your Honors further to grant unto your orator an order without notice restraining said defendants, and each of them, their

servants, agents and employees from cutting and removing any timber from the said land, or from logging the same, or from committing any acts or waste thereon, and that a writ of injunction *pendente lite* issue out of in accordance with the rules and practice of this Honorable Court, to be directed to the said defendants, and each and all of them, to restrain [119] them and each of them, their agents, servants and employees, from cutting and logging any timber from the said land, or from logging the same or from committing any act of waste thereon until the final determination of this action, and the determination of the title of your orator to the said land, and that at the final hearing such injunction may be made permanent, and that your orator may have such other and further relief as shall be meet, right and equitable in the premises.

McGOLDRICK LUMBER CO.,

By J. P. McGOLDRICK.

F. M. DUDLEY,

CULLEN, LEE & FOSTER,

Solicitors for Complainant, 500 Traders Block, Spokane, Wash. [120]

United States of America,

State of Washington,

County of Spokane,—ss.

J. P. McGoldrick, being first duly sworn, on oath deposes and says: That the above-named complainant, the McGoldrick Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Washington, and he is an officer thereof, to wit, its President; that he has read the

foregoing bill of complaint, and knows the contents thereof, and the same is true except as to those matters therein stated to be upon information and belief, and as to those he believes them to be true.

J. P. McGOLDRICK.

Subscribed and sworn to before me this 14th day of October, 1911.

W. E. CULLEN, Jr.,

Notary Public in and for the State of Washington,
Residing at Spokane.

[Endorsed]: Filed Oct. 16, 1911. A. L. Richardson, Clerk. [121]

*In the Circuit Court of the United States for the
Ninth Circuit, District of Idaho, Northern Division,
Holding Terms at Coeur d'Alene, Idaho.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHAS. J. KINSOLVING and JANE DOE KINSOLVING, Whose Real Name is Unknown, His Wife; MILWAUKEE LUMBER COMPANY, a Corporation; JOHN DOE LUNDQUIST, Whose True Name is LYN LUNDQUIST and RICHARD ROE LINDQUIST, Whose True Name is ELIX LINDQUIST; JOHN DOE, Whose Real Name is Unknown; and RICHARD ROE, Whose Name is Unknown.

**Demurrer of Defendants Lyn Lundquist and Elix
Lindquist.**

Comes now the defendants, Lyn Lundquist and Elix Lindquist, a copartnership, doing business under the firm name and style of Lundquist and Lindquist, being the defendants above named as John Doe Lundquist and Richard Roe Lindquist, and demur to the complaint of plaintiff herein on the ground and for the reason,

1. That the Court has no jurisdiction of the subject matter of the action.

2. That the complainant does not state facts sufficient to constitute a cause of action.

A. G. ELSTON,

Solicitor and Counselor for Defendants, Lundquist
& Lindquist. [122]

State of Washington,

County of Spokane,—ss.

I, A. G. Elston, do hereby certify that I am a member of the bar of the above-entitled court in good standing, that the foregoing demurrer is not interposed for the purpose of delay and that in my opinion it is well founded in point of law.

A. G. ELSTON.

[Endorsed]: Filed Nov. 18, 1911. A. L. Richardson, Clerk. [123]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, His Wife; MILWAUKEE
LUMBER COMPANY, a Corporation,
JOHN DOE LUNDQUIST and RICHARD
ROE LINDQUIST et al.,

Defendants.

**Demurrer of Defendants Charles J. Kinsolving and
Jane Doe Kinsolving (Whose Real Name is
Julia E. Kinsolving), His Wife.**

The demurrer of the above-named defendants Charles J. Kinsolving and Jane Doe Kinsolving, his wife (whose real name is Julia E. Kinsolving), and Milwaukee Lumber Company, a corporation, to the bill of complaint and amended and supplemental bill of complaint of the above-named plaintiff.

These defendants and each and every of them by protestations not confessing or acknowledging all or any of the matters or things in said bill of complaint and amended and supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said bill of complaint and supplemental bill of complaint and for causes of demurrer show:

I.

That the plaintiff has not in and by its said bill of

complaint or amended and supplemental bill of complaint, or either or both of them, made or stated such a case as entitles it in a court of equity to the relief prayed for in either or both of said bills of complaint, or to any discovery or relief from or against these defendants, or either of them, touching the matters contained in said bills of complaint or either or both of them, or any such matters. [124]

II.

That it appears from the bill of complaint and exhibits filed therewith and the supplemental bill of complaint that this Court has no jurisdiction to hear and determine this action for the following reasons:

(a) That it appears in this case from the pleadings and exhibits therein that all matters and issues *raised* by the pleadings herein have been tried before the Department of Interior and that said department had exclusive jurisdiction to try and determine such matters and issues.

(b) That all the matters and issues raised by the bill of complaint and supplemental bill of complaint with the exhibits thereto attached are issues of fact and not of law and that the finding of the Register and Receiver of the Coeur d'Alene Land Office and affirmed by the Commissioner of the General Land and the Secretary of the Interior as appears from the exhibits filed with the bill of complaint herein and supplemental bill thereto, were findings upon issues of fact tried before said Department and based upon evidence taken in support thereof and the action of said department is not reviewable by this Court.

III.

That said bill of complaint and amended and supplemental bill of complaint are and each of them is wholly without equity.

Because plaintiff had an adequate remedy at law and has had its day in court, and all matters and issues raised by said bill and supplemental bill of complaint appear to have been tried and determined by the proper tribunal having exclusive jurisdiction to try the same.

Wherefore, and for divers other good causes of demurrer appearing in the said bill and supplemental bill and exhibits filed therewith, these defendants do demur thereto and to each and both of said bills of complaint, and pray the judgment of this Honorable Court whether they or any of them shall be compelled to make any further or other answer to the said bill or amended and supplemental bill, and they and each of them humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

R. B. NORRIS,

FORNEY & MOORE,

Solicitors for said Defendants. [125]

Residence and postoffice address of R. B. Norris at St. Maries, Idaho, and Forney & Moore, at Moscow, Idaho.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

FRANK L. MOORE,

Of Counsel for Defendants, Solicitors for said Defendants.

Dated at St. Maries, this 2d day of December, A. D. 1911, State of Idaho.

State of Idaho,
County of Kootenai,
District of Idaho,—ss.

Charles J. Kinsolving, being first duly sworn, upon oath deposes and says: I am the same Charles J. Kinsolving, named as one of the defendants in the above-entitled action and make this affidavit for and on behalf of myself and the other demurring defendants mentioned in the foregoing demurrer, and that the foregoing demurrer is not interposed for the purpose of delay.

CHARLES J. KINSOLVING.

Subscribed and sworn to before me this 2d day of December, A. D. 1911.

[N. P. Seal] WILLIAM F. SARGENT,
Notary Public in and for said County and State.

[Endorsed]: Filed December 4, 1911. A. L. Richardson, Clerk. By M. W. Griffith, Deputy. [126]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING, and JANE DOE
KINSOLVING, His Wife; MILWAUKEE
LUMBER COMPANY, a Corporation, and
LYNDQUIST and LUNDQUIST, Copart-
ners,

Defendants.

Opinion on Demurrer to Complaint.

September 5, 1912.

F. M. DUDLEY, and HAPPY, CULLEN, LEE
and HINDMAN, Attorneys for Plaintiff.

FORNEY & MOORE and A. G. ELSTON, At-
torneys for Defendants.

DIETRICH, District Judge.

The principal question raised upon demurrer is not free from great doubt. If the land department had before it any substantial evidence upon which to base its findings of fact, they should not be disturbed. If, upon the other hand, it proceeded without such evidence, it erred as a matter of law, and therefore its action is here reviewable. Under the construction placed upon the "Timber and Stone Act" in the Williamson case (207 U. S. 425), decided after the action of the land department here complained of had been taken, it must be held that the evidence of fraud adduced in the contest is at best

but remotely circumstantial and extremely meager, and, upon the other hand, the circumstances are sufficient at least to raise a suspicion of fraud. In this condition it is [127] thought not to be improper to overrule the demurrer without prejudice to the right of the defendants again to urge the point upon the final hearing.

Kansas vs. Colorado, 185 U. S. 125.

Sneyder vs. DeForest, etc., 154 Fed. 142.

Accordingly, an order will be entered overruling the demurrer without prejudice, and giving defendants thirty days in which to answer.

[Endorsed]: Filed September 6, 1912. A. L. Richardson, Clerk. [128]

[Order Overruling Demurrer, etc.]

At a stated term of the District Court of the United States, for the District of Idaho, held at Boise, Idaho, on Saturday, the 7th day of September, 1912. Present: Hon. FRANK S. DIETRICH, Judge.

No. 519—N. D.

McGOLDRICK LUMBER COMPANY

vs.

CHARLES J. KINSOLVING et al.

An opinion upon the demurrer to the complaint herein having been filed on the 6th inst., in accordance therewith it is now ordered that said demurrer be and the same is hereby overruled without prejudice, and the defendants are given thirty days in

which to file and serve their answer in said cause.
[129]

*In the Circuit Court of the United States for the
Ninth Circuit, District of Idaho, Northern Divi-
sion, Holding Terms at Coeur d'Alene.*

IN EQUITY.

McGOLDRICK LUMBER CO.,

Complainant,

vs.

CHARLES J. KINSOLVING, and JANE DOE
KINSOLVING (Whose Real Name is Un-
known), His Wife; MILWAUKEE LUM-
BER COMPANY, a Corporation; JOHN
DOE LUNDQUIST (Whose True Name is
Unknown); and RICHARD ROE LIND-
QUIST (Whose True Name is Unknown);
JOHN DOE (Whose True Name is Un-
known) and RICHARD ROE (Whose True
Name is Unknown),

Defendants.

**Answer of Defendants, Charles J. Kinsolving, Jane
Doe Kinsolving, and the Milwaukee Lumber
Company.**

The answer of the defendants, Charles J. Kinsolving and Jane Doe Kinsolving, his wife, and the Milwaukee Lumber Company, to the Bill of Complaint of the above-named complainant.

In answer to the said bill the defendants, Charles J. Kinsolving and Julia E. Kinsolving (named in the complaint as Jane Doe Kinsolving), husband and

wife, and the Milwaukee Lumber Company, say as follows:

I.

We, and each of us, admit that the above-named complainant McGoldrick Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Washington and now is, and during all the times hereinafter mentioned was, a citizen and resident of the State of Washington.

II.

We, and each of us, admit that the above-named defendants, [130] Charles J. Kinsolving and Julia E. Kinsolving, his wife, and each of them, were, and now are, and during all the times in said Bill of Complaint mentioned have been, citizens and residents of the State of Idaho, living and residing at St. Maries, in the county of Kootenai, and State of Idaho, and that the Milwaukee Lumber Company is a corporation organized under and by virtue of the laws of the State of Idaho.

III.

We, and each of us, admit that the subject matter of this suit consists of real estate situated in the county of Shoshone, and State of Idaho, which is hereafter more particularly described, and the value thereof exceeds the sum of Five Thousand (\$5,000.00) Dollars, and the matter here in dispute, exclusive of costs and interest, exceeds the sum of Five Thousand (\$5,000.00) Dollars.

IV.

We, and each of us, admit that, on the 26th day of Sept., 1906, one John Shannon, being then and

there a citizen and resident of the State of Idaho, and a citizen of the United States and of lawful age, made and filed with the Register of the United States Land Office for the District of Idaho, in Coeur d'Alene, Idaho, his written statement, in duplicate, designating by proper legal subdivisions for entry under the laws of the United States for cash purchase of Timber and Stone Lands, being the Act of Congress of June 3, 1878, Chapter 151, 20 Statutes at Large, at page 1889.

The South half of the Northwest quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$), the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$), and the Northeast quarter of the Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North, Range Three (3), East of the Boise Meridian, in Shoshone County, Idaho.

setting forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; that it contained no mining or other improvements, as far as the said applicant knew, nor any valuable deposits of gold, silver, cinnabar, copper or coal; that applicant had made no other application under the said Act and [131] that he did not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons, whatsoever, by which the title which he should acquire from the Government of the United States should inure, in

whole or in part, to the benefit of any person except himself, which said statement was verified by the oath of the said applicant, John Shannon, on the said day, before the Register of said Land Office at Coeur d'Alene, Idaho, being the district wherein the said land was situated, a copy of which said entry is hereunto attached, marked Exhibit "A" and expressly made a part of complainant's Bill of Complaint, and that the said lands were, at said time and place, unappropriated public lands of the United States, open to appropriation under and by virtue of said Act, and were lands unfit for cultivation and valuable chiefly for timber situated thereon, and were uninhabited and contained no mining or other improvements, and contained no valuable deposits of gold, silver or cinnabar, and these defendants say that the said entryman, John Shannon, did apply to purchase the said lands above, and in complainant's Bill of Complaint, specifically described on speculation, and did not apply to purchase said lands in good faith to appropriate the same to his own exclusive use or benefit, and that prior to the making of said application he, the said John Shannon, had both directly and indirectly, made agreements or contracts with one William McCarter and one Joseph Johnson, and with other persons to these defendants unknown, whereby the title to said lands and premises which he, the said John Shannon, was about to acquire from the United States, by virtue of said application, should inure to the benefit of the said William McCarter and the said Joseph Johnson and to said other persons to these defendants unknown,

and these defendants further say that the said John Shannon did not comply with all the provisions of the [132] Act of Congress in regard to Timber and Stone Lands, being the Act of Congress of June 3, 1878, Chapter 151, 20 Statutes at Large, page 89 and amendments thereof, in that, on the said 26th day of Sept., 1906, when he, the said John Shannon, made application to purchase said land from the Government of the United States, and prior thereto, he, the said John Shannon, made and entered into, both directly and indirectly, divers contracts wherein and whereby the title he was about to acquire to said lands would inure to the benefit of the above-named William McCarter and Joseph Johnson and to other persons whose names are to these defendants unknown, and that, by reason of such contracts, he, the said John Shannon, was not, at said time or place, in all ways qualified, or in any way qualified, to enter the said lands under the said Act.

V.

These defendants, and each of them, admit that the Register of the said Land Office duly posted a notice of the application of the said John Shannon for the entry for purchase of the land by legal subdivision in his office for a period of sixty (60) days, and the said applicant, John Shannon, caused a copy thereof to be published for the full period of sixty (60) days in a newspaper published nearest the location of the said premises, and thereafter, and on the 16th day of January, 1907, the said applicant, John Shannon, made his proof before the said Register that, the land was of the character contemplated by

the said Act, uninhabited and without improvements and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal, and thereupon paid unto the said Receiver of the said Land Office the sum of Four Hundred (\$400.00) Dollars, together with the fees of the Register and Receiver, as provided by law, for making the said entry, and thereupon received, from the said Receiver of the United States Land Office at Coeur d'Alene, Idaho, Receiver's Receipt for the said land, numbered "Timber & Stone Entry, No. 2500," and that a copy thereof is attached to the Bill of Complaint, marked [133] Exhibit "B," and these defendants further say that the said John Shannon did not then or there comply, in all ways, or in any way, with the Laws of the United States governing the entry of the said lands under the said Act, and say that the said entry so made by the said John Shannon was not a valid or legal entry or purchase of the said land by the said John Shannon, and further say that the said John Shannon thereupon did not become, and in equity was not, the owner of said land and was not entitled to have issued or delivered to him, the said John Shannon, letters patent under the seal of the United States, conveying unto him, his heirs and assigns, the legal title to said land, in fee simple absolute, for the reason that, prior to the time the said Shannon made application for the purchase of said lands and premises, on the said 26th day of Sept., A. D. 1906, he had made and entered into contracts with one William McCarter and one Joseph Johnson and with other persons whose names

are to these defendants unknown, whereby the title which he, the said John Shannon, was about to acquire in and to said lands from the United States by virtue of said application to purchase was to inure to the benefit of the said William McCarter and the said Joseph Johnson and to said other persons to these defendants unknown, and was not to inure to the sole and exclusive use and benefit of and to the said John Shannon, and these defendants further say that he, the said John Shannon, when he made said application to purchase said lands and premises from the United States, on the said 26th day of Sept., 1906, applied to so purchase the same on speculation and for speculative purposes, and these defendants further say that the said Receiver's Receipt for "Timber & Stone Entry, No. 2500," issued to the said John Shannon for the above-described lands and premises, for the reasons above stated, was procured by fraud upon the part of the said John Shannon, and was wholly and entirely void, and these defendants further say that the complainant herein, at all times from and after the said 26th day of Sept., A. D. 1906, well knew that the [134] said John Shannon had made said application to purchase said lands and premises for speculative purposes, and well knew that the said Receiver's Receipt, numbered "Timber & Stone Entry, No. 2500," was procured by the said John Shannon by fraudulent practices and deceit, and well knew that the same was void, and at all times knew that the said John Shannon acquired no interest in, lien upon or claim to said lands and premises, either at law or in equity, or at

all, and well knew that the said John Shannon was not entitled to a United States Patent of and to said lands and premises, or any part or portion thereof.

VI.

These defendants admit that the said John Shannon, on or about the 25th day of April, A. D. 1907, signed and acknowledged the deed mentioned and described in complainant's Bill of Complaint, and paragraph VI thereof, and attached to said Bill of Complaint and marked Exhibit "C," and these defendants further say that the said Roy C. Lammers did not purchase the land from the said John Shannon and did not then and there, or at all, pay over or unto the said John Shannon the sum of Eight Thousand (\$8,000.00) Dollars, or any part or portion thereof, and further say that the said Lammers did not then and there, or at all, take title to said lands and premises as trustee for complainant, or at all, and further say that the said Lammers never, at any time, acquired any interest in, lien upon or claim to said land and premises, or any part or portion thereof, by reason of the fraudulent practices of the said John Shannon in procuring said Receiver's Receipt numbered "Timber & Stone Entry, No. 2500," and the knowledge of the complainant thereof, and these defendants further say that the complainant never, at any time, or at all, has been, or now is, in equity, or at all, the owner of the said land or any part or portion thereof, and has not been, nor is it now, entitled to the possession thereof, or any part or portion thereof, and it is not entitled to receive, or be vested with, the legal title,

or any [135] title to the said land by or through a conveyance of the said legal title from the United States of America, by and through its proper officers, to the said John Shannon, and further say that the said John Shannon was never entitled, nor is he now entitled, to a conveyance of the legal title to said land and premises from the United States, or from any other person.

VII.

These defendants say that the complainant in purchasing the said land from the said John Shannon, was not a *bona fide* purchaser, for value, or at all, and that it, complainant, did not purchase said land without notice of any defect whatsoever in said title and did not, in making said purchase, rely upon the entry of the same and upon the Receiver's Receipt issued to the said John Shannon by the Receiver of the United States Land Office, at Coeur d'Alene, Idaho, on the 16th day of Jan. 1907, and further say that the complainant undertook to purchase said land from the said John Shannon and the said William McCarter and the said Joseph Johnson before any United States patent therefor had ever issued, and while the legal title to the same was in the United States, and with full knowledge of the fraudulent practices of the said John Shannon above set forth, had and done to procure the issuance of said Receiver's Receipt numbered "Timber & Stone Entry, No. 2500," and with full knowledge that prior to the time the said John Shannon had made application to purchase said lands and premises from the United States Government he had entered into con-

tracts and agreements with the said William McCarter and the said Joseph Johnson and other persons, whereby the title he was about to acquire from the United States, and expected to acquire from the United States, in and to said lands and premises, should inure to the benefit of the said William McCarter and the said Joseph Johnson and said other persons, and well knew that he, the said John Shannon, prior to the making of said declaratory statement or entry [136] for said lands and premises on the said 26th day of Sept. 1906, had promised and agreed to convey to the said William McCarter and to the said Joseph Johnson and to said other parties, whose names are unknown to these defendants, an interest in and to said lands and premises, and that he, the said John Shannon, long prior to the said 25th day of April, 1907, and on the 16th day of Jan. 1907, had, pursuant to said agreement, undertaken and attempted to convey said lands and premises to the said Joseph Johnson.

VIII.

These defendants admit that on the 16th day of July, 1907, the above-named defendant, Charles J. Kinsolving, made and filed in the United States Land Office, at Coeur d'Alene, Idaho, his Affidavit of Contest against the said entry of the said lands by the said John Shannon, in the words and figures set forth in paragraph VIII of complainant's Bill of Complaint, and that thereupon the Register of the said Land Office gave notice, as required by law, that a hearing of said charges would be had at Coeur d'Alene, Idaho, on the 13th day of May, 1908, and

admit that Exhibit "D," attached to complainant's Bill of Complaint, is a substantial copy of said notice, and admit that thereafter, and on the 21st day of May, 1908, in accordance with the said notice, and pursuant to certain stipulations and agreements between the parties interested therein, the parties to the said contest, including the said John Shannon and the said Roy Lammers and the complainant herein, McGoldrick Lumber Co., and the defendant herein, Charles J. Kinsolving, appeared before the Register and Receiver of the said Land Office at Coeur d'Alene, Idaho, and proof was duly introduced in behalf of the said contestant, the defendant herein, Charles J. Kinsolving, and on behalf of the said entryman, John Shannon, and on behalf of the said Roy C. Lammers and the complainant herein, the McGoldrick Lumber Co., as purchaser of said land from said entryman, John Shannon, and that a substantial copy of said proof and of said [137] proceedings is attached to complainant's Bill of Complaint and marked Exhibit "E," and admit that thereafter, and on the — day of —, 1908, the said Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, filed their written decisions in said Land Office and in said proceedings supporting the Affidavit of Contest of the said defendant, Charles J. Kinsolving, and holding the entry of the said John Shannon for cancellation, and vacating and setting aside said Receiver's Receipt numbered "Timber & Stone Entry, No. 2500," and holding the same for naught, and that exhibit "F," attached to complainant's Bill of Complaint is a sub-

stantial copy of the opinion of the said Register and Receiver upon the said Contest Affidavit of this defendant, Charles J. Kinsolving.

IX.

These defendants admit that at the beginning of said proceedings before the said Register and Receiver, the complainant demurred to the Affidavit of Contest of this defendant, upon the ground that the statements therein made were insufficient to support the contest or any order with reference to said entry looking to the cancellation thereof, and objected to the said Register and Receiver hearing any proof or taking any testimony in regard thereto upon said grounds, and that said demurrer and Objection said Register and Receiver overruled and permitted the said contestant to introduce testimony in support of said Contest Affidavit, and these defendants say that such testimony was not to the manifest injury of complainant, or against its rights in the premises, and further say that, in overruling the said Demurrer and Objection to the taking of testimony the said Register and Receiver did not commit an error of law to the prejudice of the rights of your orator, and these defendants further say that, on the 16th day of July, 1907, when this defendant, Charles J. Kinsolving, filed said Affidavit of Contest in the United States Land Office at Coeur [138] d'Alene, Idaho, said Affidavit was by the said Register and Receiver forwarded to the Commissioner of the General Land Office of the United States, at the City of Washington, D. C., and thereupon, and pursuant to the course and practice adopted by the Department

of the Interior, in matters pertaining to the sale and disposition of the public lands of the United States, the said Commissioner of the General Land Office, by letter "E," dated Dec. 17, 1907, directed that the contestant be allowed thirty (30) days in which to appear and apply for notice and proceed with said contest, and that the said Register and Receiver caused said letter "E" to be served on the said contestant, the defendant, Charles J. Kinsolving, and application for notice of hearing was duly made by him, and that on Feb. 22, 1908, notice of hearing was issued by said Register and Receiver of said Coeur d'Alene Land Office and served upon the parties to said contest, citing them to appear at said local land office in the City of Coeur d'Alene, on the 13th day of May, 1908, to submit testimony touching the allegations of the said Contest Affidavit, and that thereafter, and on May 21, 1908, all parties to said contest appeared at said Land Office and submitted evidence and testimony, *pro* and *con*, upon the allegations of said contest affidavit, and that, in the premises, it was the legal duty of the said Register and Receiver to hear and record such testimony, and that such Register and Receiver had no jurisdiction, power of authority to sustain any Demurrer or Motion or other proceedings directed at or to the legal sufficiency of said Affidavit of Contest.

X.

These defendants admit that at said hearing the contestant, the said defendant, Charles J. Kinsolving, offered in evidence a certified copy of a contract between the entryman, John Shannon, and William

McCarter, and that said contract is attached to the evidence taken before said Register and Receiver, attached to complainant's [139] Bill of Complaint, marked exhibit "A," for identification to said testimony, and admit that the complainant objected to the introduction of the same upon the ground set forth in said copy of said proof attached to the Bill of Complaint as exhibit "E," and that the said Register and Receiver sustained complainant's said objection thereto and refused to admit the same, and these defendants say that in making and rendering said decision said Register and Receiver did not treat or consider said contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing, or at all, and say that the said Register and Receiver did not utterly or totally ignore the fact and did not ignore the fact that said pretended contract had, when offered in evidence, been rejected, and further say that the said Register and Receiver did not consider or treat said contract as if admitted in evidence, and further say that said Register and Receiver did not err in law in their said decision or in their consideration of the testimony submitted upon said contest to the prejudice of the rights of complainant, or at all, except that the ruling of the Register and Receiver in rejecting said Exhibit "A," proffered in said hearing upon said Contest Affidavit by this defendant, Charles J. Kinsolving, was manifest error and prejudicial to the rights of this defendant, Charles J. Kinsolving, in the premises, and further say that by said exhibit "A" so rejected by said Register and

Receiver of the said United States Land Office, at Coeur d'Alene, Idaho, when offered in evidence by said contestant and this defendant, Charles J. Kinsolving, he, the said Charles J. Kinsolving was able to prove, and that said exhibit "A," when exhibited in court, will prove, that on the 24th day of Sept., 1906, and two days before the said John Shannon made application for the purchase of said lands and premises in said agreement in complainant's Bill of Complaint and in "Timber & Stone Entry, No. [140] 2500," he, the said John Shannon, for and in consideration of the sum of One Thousand (\$1,000.00) Dollars, had promised and agreed, in writing, to convey, to the said William McCarter, party of the first part in said Exhibit "A," and undivided one-half interest in and to said lands and premises, and the whole thereof, and that when, on the 26th day of Sept., A. D. 1906, the said John Shannon made application to purchase said lands and premises from the United States Government, under and pursuant to the terms and provisions of the Act of Congress approved June 3, 1878, he, the said John Shannon, had directly made an agreement with the said William McCarter by which the title which he, the said John Shannon, should acquire from the Government of the United States should inure, in part, to the benefit of the said William McCarter, and that when he, the said John Shannon, on the said 26th day of Sept., A. D. 1906, made application to so purchase said lands and premises from the Government of the United States he applied to purchase the same, and the whole thereof, on speculation

and not in good faith to appropriate it to his own exclusive use and benefit, and that he, the said John Shannon, then and there perpetrated a fraud upon the Government of the United States and undertook to wrongfully, unlawfully and fraudulently procure the title to said lands and premises from the United States, all of which was at all times well known to the said Roy C. Lammers and to the officers and managers of the complainant, and complainant as well.

These answering defendants further admit that, at the conclusion of the testimony of the said contestant, Charles J. Kinsolving, given before the Register and Receiver, and after the said contestant had rested his case, the complainant moved the said Register and Receiver to dismiss the said contest for the reason that there had been no evidence introduced that would, in any way, affect the entry made by said entryman, John Shannon, on the said lands, and that the said evidence of the said contestant clearly showed that the said John Shannon acted, at all times, within his [141] rights, and had made no contract or agreement to convey any part of the interest in the said land, and also that said evidence was wholly insufficient to justify any findings of fraud on the part of the said entryman, John Shannon, or to justify the cancellation of the said entry, and that the said Register and Receiver overruled the said motion to dismiss, and these defendants say that the said Register and Receiver had no right, no jurisdiction and no authority of law or practice to sustain said motion, and further say that, under the

rules and practice of the Department of the Interior, respecting and relating to the sale and disposition of the public lands of the United States, it was the legal duty of said Register and Receiver to hear and consider all evidence offered in support of said Contest Affidavit, and consider and determine the rights of the respective parties to said Contest upon the merits according to the said evidence before them, and these defendants say that the refusal of the Register and Receiver to sustain said motion and to dismiss said Contest proceedings did not err in law to the prejudice of the rights of the complainant, or at all, and these defendants admit that, at the conclusion of all the testimony before the said Register and Receiver, the complainant repeated its motion to dismiss the said proceedings upon the said grounds, and admit that the Register and Receiver overruled the same and refused to dismiss the same, and these defendants say that the said Register and Receiver, in overruling said motion, and in refusing to dismiss said proceedings, did not err in law to the prejudice of the rights of the complainant, or at all, and these defendants further say that the said Register and Receiver, in making and rendering their said decision, did not wrongfully or unlawfully, or in any way, ignore the evidence adduced at said hearing, and did not, without any testimony whatever to support such finding, find that said entry was made for speculative purposes and [142] not for the sole and exclusive benefit of the said application, and further say that, in truth and in fact, there is an abundance of evidence preponderating in support

and in justification of the findings of said Register and Receiver that when the said John Shannon made application to purchase said lands and premises from the United States he did not make such application in good faith, and that he made said entry for the use and benefit of others than himself, and not for his sole and exclusive use and benefit, and these defendants further say that the said Register and Receiver, in making said finding, and in rendering said decision and judgment upon the matters of said Contest did not misconstrue or misinterpret the law applicable to such case, in any manner or form, and further say that said Register and Receiver did not fail or refuse to hold that, as a matter of law, the contestant was bound to show, by evidence, that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of the said entryman, John Shannon, and further say that said Register and Receiver did not hold, as a matter of law, that they were authorized and empowered to, and had jurisdiction to, find that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of said Shannon without evidence to support such finding or upon ungrounded suspicions existing solely in their own minds, but that such Register and Receiver did hold, as will fully appear when said decision is exhibited to this court, that there was no direct evidence showing that an agreement between Shannon and anyone else, prior to the filing of his timber application, or even prior to the submitting of his proof, had been entered into to convey all, or any portion, of the land,

or to give anyone any interest therein, but, in the light of his subsequent actions, or acts, we are inclined to the belief that there was such an understanding, and that his conveyance of the land immediately [143] after proof was pursuant to such an agreement, and we think the record will sustain the view that the entry was made for speculative purposes and not for the sole and exclusive benefit of the applicant, and for this reason we recommend that the entry be cancelled, and these defendants further say that when the entire record of the proceedings in the Department of the Interior respecting the contest of the said entry of the said John Shannon, by this defendant, Charles J. Kinsolving, is exhibited to the Court, such evidence will conclusively show that the said John Shannon made application to purchase said lands and premises from the Government of the United States for speculative purposes and that such fact was, at all times, known to the complainant.

And these defendants further say that the said Register and Receiver did not make their said decision under or upon a misconstruction of the law or that they were induced, by any misconstruction of the law, to make said decision, and that said Register and Receiver, in rendering and making said decision first found the facts as disclosed by the testimony adduced upon said Contest, and clearly and correctly applied the law thereto, and that the findings of fact made by said Register and Receiver are abundantly supported by the evidence submitted before them upon said Contest, as an exhibition of said evidence will fully show, and that the Register

and Receiver made proper application of the law to the facts so found by them.

XI.

These defendants admit that within the time provided by law the complainant appealed from the decision of the said Register and Receiver of the United States Land Office, at Coeur d'Alene, Idaho, to the Commissioner of the General Land Office and that thereafter, and on the 29th day of May, 1909, the Commissioner of the said General Land Office affirmed the decision of the Register and Receiver of the United States Land Office at Coeur d'Alene, [144] Idaho, a copy of which said decision affirming the same is attached to complainant's Bill of Complaint and marked Exhibit "G."

XII.

These defendants say that the Commissioner of the General Land Office in making and rendering his said decision did not consider the contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing, and that he, the said Commissioner, was not influenced therein by the decision of the Register and Receiver of the Local Land Office, and that he did not, utterly and totally, or at all, ignore the fact that said contract had, when offered in evidence, been rejected and further say that the said Commissioner of the General Land Office did not consider said contract as admitted in evidence and did not err in law to the prejudice of the rights of complainant, or at all, and these defendants further say that the said Commissioner of the General Land Office, in making and ren-

dering said decision, did not ignore the evidence adduced at said hearing, and did not, without any testimony whatsoever to support such finding, find that said entry was made for speculative purposes and not for the sole and exclusive benefit of said applicant, but say that the said Commissioner did find that said entry of the said John Shannon was made for speculative purposes and was not made for the sole and exclusive use and benefit of said applicant, John Shannon, and that said finding was based upon the evidence adduced at the hearing of said Contest, and further say that there is an abundance and a preponderance of evidence to support and justify such finding, and to support and justify the finding that the said entry, when made by the said John Shannon, on Sept. 26, 1906, was made for speculative purposes and was not made for his sole and exclusive use and benefit, and these defendants further say that the said Commissioner of the General Land Office, in making his said findings and decision affirming the decision of the Register and Receiver of [145] the United States Land Office at Coeur d'Alene did not misinterpret the law applicable to said case, or to said Contest, or to the facts found therein from the evidence, and further say that the said Register and Receiver did hold, as a matter of law, that the contestant was bound to show, by evidence, that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of the said entryman, Shannon, and further say that the said Commissioner of the General Land Office did not hold that he, as a matter of law, was

authorized and empowered to, and had jurisdiction to, find that said entry was made for speculative purposes and not for the sole use and benefit of said Shannon totally without evidence to support such finding, and upon ungrounded suspicion existing solely in his own mind and not the minds of the Register and Receiver in the Local Land Office, but that said Commissioner of the General Land Office did hold that there was sufficient evidence adduced at said hearing to establish the fact that when the said entryman, John Shannon, made entry to purchase said lands and premises on the said 26th day of Sept., A. D. 1906, he made such application for speculative purposes and not for his exclusive use and benefit, and these defendants say that the said Commissioner of the General Land Office made no error, or no misconstruction of the law, and that by no error or misconstruction of the law was the said Commissioner induced to, or did, make or render his decision affirming the decision of the Local Land Office, and further say that the decision of the said Commissioner of the General Land Office is supported by the evidence adduced in said Contest, and that the said Commissioner made proper application of the law to the facts established by, and deducible from, the said evidence, and further say that to have reversed the decision of the said Register and Receiver of the said Land Office at the city of Coeur d'Alene, and to have ordered letters patent conveying the legal title to the said land to said Shannon, and thereby [146] vesting the said legal title to said premises in complainant, would have been gross error and would have been

contrary to the evidence adduced upon said contest hearing, and contrary to the law applicable thereto.

XIII.

These defendants admit that after the decision of the said Commissioner of the General Land Office, and within the time fixed by law, complainant appealed from the decision of the Commissioner of the General Land Office to the Secretary of the Interior, and thereafter, and on the 10th day of May, 1910, the Secretary of the Interior filed his decision, affirming the decision of the Commissioner of the General Land Office and of the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, and that exhibit "H," attached to the Bill of Complaint, is a substantial copy of said decision.

XIV.

And these defendants say that the Secretary of the Interior, in making and rendering his decision, did not treat and consider the said contract between the said Shannon and said McCarter as if the same had been admitted in evidence at said hearing, and was not influenced therein by the decision of the Register and Receiver of the Local Land Office and did not ignore the fact that said contract, when offered in evidence, had been rejected, and did not consider or treat said contract as if admitted in evidence, and did not err in law, to the prejudice of the rights of the complainant, or at all, and these defendants further say that the said Secretary of the Interior, in making and rendering said decision, did not ignore the evidence adduced at said hearing, and did not make the same without any testimony to support his

finding, and further say that said Secretary of the Interior, in making and rendering his said decision, did find that said entry was made for speculative purposes and not for the sole and [147] exclusive use and benefit of the applicant, John Shannon, and that such decision was based upon an abundance of evidence in support thereof, and that there was a preponderance of evidence adduced at the hearing upon said Contest to support and justify the finding that the said entry, when made by the said John Shannon, on the 26th day of Sept. 1906, was made otherwise than for his sole and exclusive use and benefit, and further say that the said Secretary of the Interior in making said finding, did not misconstrue or misinterpret the law applicable to said Contest and that said Register and Receiver did hold that, as a matter of law, the contestant was bound to show, by evidence, that such entry was made for speculative purposes and not for the sole and exclusive use and benefit of the said Shannon, and these defendants further say that the said Secretary of the Interior did not hold, as a matter of law, or otherwise, that he was authorized or empowered to, or had jurisdiction to, find that said entry was made for speculative purposes and not for the sole use and benefit of the said Shannon without evidence to support such finding, or upon ungrounded suspicion existing solely in his own mind and not the minds of the Register and Receiver in the Local Land Office, and these defendants say that the said Secretary of the Interior, in rendering said decision affirming the decision of the Commissioner of the General Land

Office based the same upon the evidence adduced upon the hearing of said Contest, and that without, and in addition to, the said written contract or agreement made and entered into on the 24th day of Sept. 1906, between the said William McCarter and the said entryman, John Shannon, there was a preponderance of evidence in support of the findings of the Register and Receiver and the Commissioner of the General Land Office and the Secretary of the Interior that the said entryman, John Shannon, when he made application to purchase said lands and premises of the United States, on the 26th day of Sept., A. D. 1906, [148] made such application for speculative purposes and not for his own exclusive use and benefit, and these defendants further say that the said Secretary of the Interior was not induced to, and did not, make or render his decision affirming the decision of the Commissioner of the General Land Office and the Local Land Office upon errors or misconstruction of the law, and further say that, had the Secretary of the Interior reversed the decision of the Commissioner of the General Land Office and the decision of the Register and Receiver of the Local Land Office and directed the issuance of patent to the said John Shannon, and thereby have vested complainant with the legal title to the said lands and premises, such action would have been contrary to the evidence, and in violation of the law applicable thereto.

XV.

And these defendants further say that on the 25th day of Oct. 1910, the said defendant, Charles J. Kinsolving, as attorney in fact for the Santa Fe Pacific

Railroad Company, a corporation, organized under an Act of Congress approved March 3, 1897, and for the said Santa Fe Pacific Railroad Company, a corporation, made selection of the above described lands and premises, and the whole thereof, under and by virtue of lieu land scrip, in accordance with the Act of Congress of June 4, 1897, and June 6, 1900, and received therefor Receiver's Receipt covering the said lands and premises, and thereafter, and on the 27th day of March, 1911, the United States, by and through its legally constituted officers, pursuant to said application and proof made, made and caused to be delivered to the said Santa Fe Pacific Railroad Company, a patent, conveying the title of the United States in and to

The South half of the Northwest Quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the Northeast quarter of the Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Nine (9), in Township Forty-four (44) North of Range Three (3), E. B. M., in Idaho, containing 160 acres,

the same being the lands and premises in complainant's Bill of [149] Complaint and in this Answer above mentioned and described, and that thereafter, and on the 15th day of Sept., A. D. 1911, and long prior to the commencement of this suit by complainant, the said Santa Fe Pacific Railroad Company, a corporation, for a valuable consideration, to wit, the sum of Twelve Thousand (\$12,000.00) Dollars, sold, assigned and transferred the said lands and premises and the whole thereof, to the defendant

herein, the Milwaukee Lumber Company, a corporation, and these defendants further say that the said Charles J. Kinsolving and Julia E. Kinsolving, his wife, have never, at any time, held, nor do they now hold, the legal title to the said lands and premises, or any part or portion thereof, and further say that never, at any time, has any patent from the United States, or any instrument from the United States, conveying the legal title, or any title, to said lands and premises to these defendants, or either or any of them, been issued by the United States, or otherwise.

XVI.

These defendants further say that the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, did not err in holding that the said "Timber and Stone Entry, No. 2500," made by the said John Shannon for the land in controversy in the Contest filed by the defendant, Charles J. Kinsolving, was made for speculative purposes and not for the sole and exclusive use and benefit of the said John Shannon, and did not err in holding said entry for cancellation, and further say that the Commissioner of the General Land Office and the Honorable Secretary of the Interior did not err in affirming the decision of the said Register and Receiver, and in holding that said entry No. 2500 should be cancelled, and further say that no act of the said officers, or either of them, in regard to the same, was, or is, against the laws of the United States, and further say that the decisions of said officers, in all matters respecting said Contest, were in [150] accordance

with a preponderance of the evidence adduced upon said Contest, and in compliance with the law applicable thereto, and that should said officers, or either or any of them, have decided in favor of the entryman, John Shannon, and in support of the title of the complainant, such decision would have been contrary to the evidence and against the law.

XVI½.

These defendants admit that the Milwaukee Lumber Company claims an interest in said property, and claims to be the owner thereof, in fee simple, except that it, the said Milwaukee Lumber Company, on the 25th day of Sept., A. D. 1911, entered into an agreement in writing wherein and whereby it premised and agreed, upon certain terms and conditions in said agreement contained, to sell and convey said lands and premises to the defendants, Richard Roe Lindquist, whose true name is Elix Lindquist, and John Doe Lundquist, whose real name is Lyn Lundquist.

XVII.

And these defendants further say that, on the 15th day of Sept. 1911, the said corporation, Santa Fe Pacific Railroad Company, acting by and through its said attorney in fact, Charles J. Kinsolving, for a valuable consideration, to wit, the sum of Twelve Thousand (\$12,000.00) Dollars, and in due course of business sold, transferred and conveyed, by quitclaim deed, the above mentioned and described property to the defendant, the Milwaukee Lumber Company, and that said deed was recorded in the County of Shoshone and State of Idaho, in Book 42, on page

149, of the records of said County of Shoshone, on the 24th day of Sept. 1911, and that the said defendant, Milwaukee Lumber Company, on the said 15th day of Sept. 1911, became the owner, in fee simple, of said lands and premises, and each and every part thereof, for a valuable consideration, in good faith, and in the due course of business, and these defendants further say that the said transfer was made upon a [151] valid, legal and valuable consideration, to wit, the sum of Twelve Thousand (\$12,000.00) Dollars, and was not made in fraud of any rights of the complainant in the premises, and was not made by or through a conspiracy or any conspiracy, entered into by the said defendants, Charles J. Kinsolving and the said Milwaukee Lumber Company, or any conspiracy at all, and that such sale and conveyance was not made in an effort to defeat the rights of complainant in the premises, or any rights of the complainant at all.

XVIII.

These defendants admit that the above-described land has thereon a large amount of white pine and other timber, suitable for the purpose of manufacturing into logs, and is valuable solely for its said timber, and that the present value of said premises would be largely destroyed if the said timber should be cut and removed therefrom.

XIX.

These defendants say that the said defendants, Charles J. Kinsolving and the said Milwaukee Lumber Company, or either of them, did not, on or about the first day of Oct. 1911, or at any other time, or at

all, enter upon the said lands and premises through any conspiracy to defeat the rights of complainant, or at all, through his or their agents or contractors, servants and employees, or at all, or the said Elix Lindquist and said Lyn Lundquist, and commence to cut or remove the timber, or any part or portion thereof, from the said land, or to log the same for the purpose of converting the said timber into lumber or destroying the value of said land so far as the complainant is concerned, or at all, and further say that they never have been, or are they now, engaged in cutting or removing the timber from the said land, or in logging the same for the purpose of manufacturing the same into lumber, and say that they never had threatened to so cut or remove the timber from the said [152] land or to log the same.

XX.

And these defendants admit that the defendant, Charles J. Kinsolving, is a man of small means but say that he, the said defendant, Charles J. Kinsolving, is not mainly interested in said lands and premises under his agreement, or any agreement, with the Milwaukee Lumber Company, and say that he is not the owner of the said lands and premises, or any part or portion thereof, and further say that he is not interested in said lands and premises in any way, manner, shape or form.

XXI.

And these defendants further say that nothing done in the premises by these defendants concerning or respecting the said lands and premises are contrary to equity or good conscience or tend to

the manifest wrong, injury or oppression of complainant in the premises, and further say that each and every thing had and done in the premises by these defendants, or either or any of them, was so done within the legal rights of these defendants, and each of them.

XXII.

These defendants further say that heretofore, and on or about the 17th day of July, 1905, the John Shannon mentioned and described in complainant's Bill of Complaint made homestead entry for

The South half of the Northwest Quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$) the Northeast Quarter of the Southwest Quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) and the Southwest Quarter of the Northeast Quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North of Range Three (3), East, Boise Meridian;

and that the said lands and premises are the same and identical lands and premises in complainant's Bill of Complaint and in the Answer of these defendants hereinbefore and hereinafter mentioned and described, and that thereafter the said John Shannon made application to offer final proof on said homestead as a commutation cash entry, which application was duly and regularly published and that on the 26th day of September, 1906, was the day set for such final proof. That on the 24th day of Sept., A. D. 1906, the said [153] John Shannon made and executed an agreement with one William McCarter, in the following words and figures, to wit:

“This agreement made and entered into this

24th day of September, 1906, by and between John Shannon, of Kootenai County, State of Idaho, party of the first part, and William McCarter, of Kootenai County, State of Idaho, party of the second part.

WITNESSETH, that the said party of the first part for and in consideration of the sum of one thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged and other valuable considerations, hereby agrees and binds himself, to convey to the said party of the second part, an undivided one half interest in and to the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Sec. 9, Twp. 44 N., R. 3 E., B. M., by good and sufficient warranty deed, as soon as he, the said party of the first part, makes final homestead proof of the said lands and premises and receives his receiver's final receipt therefor.

IN WITNESS WHEREOF, said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN SHANNON. (Seal)

That the said John Shannon duly acknowledged the execution of said agreement on the said 24th day of Sept., A. D. 1906, before Edward P. Brennan, a Notary Public in and for Kootenai County, State of Idaho, so as to entitle the said contract to be recorded, and that thereafter, and on the 21st day of January, 1907, at the hour of 9 o'clock A. M., the said instrument was duly recorded in Book "E" of Agreements, at page 589 of the Records of Shoshone

County, State of Idaho.

That the said John Shannon did not make, or failed to make, proof under said commuted homestead entry, and, on the 26th day of Sept. 1906, made application to purchase said lands and premises from the United State pursuant to the Act approved June 3, 1878, generally known as the "Timber and Stone Act," and made and filed, with the Register of the United States Land Office at the City of Coeur d'Alene, Idaho, the requisite declaratory statement therefor, and that when he, the said John Shannon, made and filed said declaratory statement and made application to purchase said lands and premises pursuant to said Timber and Stone Act the said written agreements above referred to was then in full force and effect, and [154] that prior to the time the said John Shannon filed said declaratory statement and made application to purchase said lands and premises, on the said 26th day of Sept., A. D. 1906, the exact date of which is unknown to these defendants, the said John Shannon had made and entered into an agreement with one Joseph Johnson, whereby the title to said lands and premises which he, the said John Shannon, was to acquire, and expected to acquire, from the United States, under and by virtue of said application and said declaratory statement and the provisions of said Timber and Stone Act, was to inure to the said Joseph Johnson and to said other persons whose names are to these defendants unknown, and that when the said John Shannon so made said application to purchase said lands and premises and so filed

said declaratory statement therefor, he, the said John Shannon, made said application for speculative purposes and not for his sole use and benefit and made the same contrary to the provisions of said Act of Congress of June 3, 1878, generally known as the "Timber and Stone Act."

And these defendants further say that thereafter such proceedings were had and done on the said application of the said John Shannon to purchase said lands and premises that on the 16th day of January, 1907, he submitted proof upon said declaratory statement, and wrongfully and unlawfully procured the Register of the said United States Land Office, at Coeur d'Alene, Idaho, to accept and receive from him, the said John Shannon, the purchase price of said lands and premises and to issue to him, the said John Shannon, "Timber & Stone Entry, No. 2500," and that on the 16th day of January, A. D., 1907, and immediately following the issuance of said Receiver's Receipt numbered "Timber & Stone Entry, No. 2500," and before patent had issued conveying the title to said lands and premises to the said John Shannon, and pursuant to the agreement between the said John Shannon and the said Joseph Johnson, whereby the [155] title to said lands and premises which he, the said John Shannon, expected to acquire, and undertook to acquire, from the United States, was to inure to the benefit of the said Joseph Johnson, he, the said John Shannon made, executed and delivered to the said Joseph Johnson a good and sufficient deed of conveyance, conveying said lands and premises, and the whole

thereof, to him, the said Joseph Johnson.

XXIII.

And these defendants further say that thereafter, and on or about April 25, 1907, and prior to the issuance of any patent conveying the title of the United States in and to said lands and premises to the said John Shannon, or to any other person, the said John Shannon and the said Joseph Johnson, and each of them, made, executed, acknowledged and delivered to one Roy C. Lammers a good and sufficient deed of conveyance of and to said lands and premises, and each and every part and parcel thereof, and that thereafter, and on or about August 7, 1907, said deeds, and each of them, were recorded in the office of the Recorder of Shoshone County, State of Idaho, and these defendants further allege that they are informed, from an examination of complainant's Bill of Complaint, and believe, and upon such information and belief say that the said Roy C. Lammers, in accepting said deeds of conveyance of and to said lands and premises, was acting as the agent of the complainant, and claimed and pretended to take the title to said lands and premises in trust for complainant, and that thereafter, and about the month of May, A. D. 1907, transferred and conveyed said lands and premises to the said complainant.

XXIV.

And these defendants further say that at all times from the said 26th day of Sept. 1906, up to and until the said Roy C. Lammers made and executed said deed of conveyance of and to said lands and premises to the complainant herein, the said Roy C. Lam-

mers was the employed agent of the complainant and was authorized [156] and empowered to make purchases of timber lands for and on behalf of said complainant and that during said periods of time he, the said Roy C. Lammers, and the said complainant well knew that the said John Shannon made application to purchase said lands and premises on the said 26th day of Sept., A. D. 1906, for speculative purposes and not for his exclusive use and benefit, and well knew that he, the said John Shannon, prior to making said application to purchase said lands and premises had made and entered into said written agreement, whereby the title which he, the said Shannon, intended to, and expected to, acquire from the United States should inure to the benefit of him, the said William McCarter, and also during the same periods of time he, the said Roy C. Lammers well knew that, prior to the said 26th day of Sept. 1906, he, the said John Shannon, had made and entered into said agreement with the said Joseph Johnson, whereby the title to said lands and premises which he, the said Shannon, intended to, and expected to, acquire from the United States should inure to the benefit of the said Joseph Johnson, and also he, the said Roy C. Lammers, and the said complainant well knew that he, the said John Shannon, wrongfully, unlawfully and fraudulently procured the Receiver of the said United States Land Office at Coeur d'Alene, Idaho, to issue said Receiver's Receipt numbered "Timber & Stone Entry, No. 2500," and well knew that said "Timber & Stone Entry, No. 2500" was void, and well knew that no patent con-

veying the title of the United States to said lands and premises to the said John Shannon had been issued thereon.

XXV.

And these defendants further say that on or about the 16th day of July, 1907, the above named defendant, Charles J. Kinsolving, filed in the said United States Land Office at Coeur d'Alene, Idaho, his Affidavit of Contest against the said entry of the said lands by the said John Shannon, and that [157] thereafter such proceedings were had and done upon said Affidavit of Contest that on the 21st day of May, 1908, said Contest was brought for hearing. That the contestant, this defendant, Charles J. Kinsolving, the said John Shannon, the entryman, and the complainant herein were all present at said hearing and submitted evidence, *pro* and *con*, upon the issues raised by said Contest Affidavit, and thereafter the said Register and Receiver made and rendered their decision therein, holding said entry of the said John Shannon for cancellation, on the ground that the said Shannon made application to purchase said lands and premises from the United States for speculative purposes *and for* his exclusive use and benefit. That thereafter such proceedings were had and done in said Contest that the complainant appealed from the said decision of the Register and Receiver of said Local Land Office to the Commissioner of the General Land Office and thereafter the said Commissioner of the General Land Office rendered his decision in said matter, affirming the decision of the Register and Receiver, holding the entry of said

John Shannon for cancellation, and thereafter the complainant appealed from the decision of said Commissioner of the General Land Office to the Secretary of the Interior, and thereupon such proceedings were had and done that the Secretary of the Interior affirmed said decision of the Commissioner of the General Land Office and the decision of the Register and Receiver of the Local Land Office, and held the entry of the said John Shannon for cancellation, and that the said entry of the said John Shannon was cancelled and held for naught, and that no United States patent, conveying the said lands and premises to the said John Shannon, was ever issued. That the said Department of the Interior, acting by and through its proper officers, to wit, the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, the Commissioner of the General Land Office and the Secretary of the Interior, had jurisdiction and authority to hear said Contest and to determine the rights of the complainant herein, [158] the said Roy C. Lammers and the said John Shannon, in and to said lands and premises, and each and every part and parcel thereof, acquired by, or claimed by, or under the application of the said John Shannon to purchase the same from the United States and the said Receiver's Receipt "Timber & Stone Entry No. 2500," and did so determine such rights of the complainant and the said Roy C. Lammers and the said John Shannon, upon the testimony adduced at said Contest hearing, and under the law applicable to the issues raised thereby, and these defendants say that all right, or manner of

right, of the complainant in and to the lands and premises in the Bill of Complaint mentioned and described, by reason of any claim, or pretence of claim, set forth in said Bill of Complaint, have been fairly, fully and completely litigated before the Department of the Interior of the United States having jurisdiction to sell and dispose of the unappropriated Government lands of the United States, upon issues properly raised, and have been determined adversely to the complainant, as these defendants will be able to show and prove by the records and files of the said United States Land Office at Coeur d'Alene, Idaho, and the records of the office of the Commissioner of the General Land Office and the records of the office of the Secretary of the Interior.

XXVI.

And this defendant, Milwaukee Lumber Company, says that it is a corporation engaged in the manufacture of lumber and operating extensive sawmills at St. Maries, in Kootenai County, Idaho, and that, in carrying on its said business of manufacturing lumber, it is necessary to purchase large quantities of logs and standing timber, and that to procure standing timber it is also frequently necessary to purchase the land upon which said timber is standing and growing, and that the purchase of said lands and said standing timber is a part of the business of this defendant incidental [159] to its business of manufacturing lumber.

XXVII.

And this defendant further says that, on or about, or shortly before, the 15th day of Sept. 1911, it be-

gan negotiations with the defendant, Charles J. Kinsolving, for the purchase of

The South half of the Northwest quarter (S. $\frac{1}{2}$ NW. $\frac{1}{4}$) the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the Northeast quarter of the Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Nine (9), Township Forty-four (44) North, of Range Three (3), East of the Boise Meridian, containing 160 acres,

and that the said Charles J. Kinsolving exhibited to the officers and agents of this defendant a United States patent issued on the 27th day of March, A. D. 1911, conveying said lands and premises, and the whole thereof, to the Santa Fe Pacific Railroad Company, a corporation, in lieu of land belonging to the said Santa Fe Pacific Railroad Company situated and included within the limits of a public forest reservation known and officially designated as the "San Francisco Mountains Forest Reserve, Arizona," a true and correct copy of which patent is hereunto attached, marked Exhibit "A," and this defendant asks that the same be considered as a part of its Answer. That at the same time and place the said defendant, Charles J. Kinsolving, exhibited to the officers and agents of this defendant corporation two Powers of Attorney, executed by the said Santa Fe Pacific Railroad Company, whereby said Santa Fe Pacific Railroad Company did appoint the said Charles J. Kinsolving its attorney in fact to convey the above mentioned and described lands, copies of which said Powers of Attorney are hereunto an-

nexed, marked respectively, "B" and "B1," and this defendant asks that the said be read and considered as a part of this Answer.

XXVIII.

And this defendant further says that its officers, authorized and empowered to make purchase of logs, standing timber and timber lands for it in the usual course of its business, relying [160] upon said patent and said Powers of Attorney, believed that the said lands and premises belonged to the said Santa Fe Pacific Railroad Company, and that this defendant, Charles J. Kinsolving, was duly authorized and empowered to transfer and convey the same as attorney in fact for said Santa Fe Pacific Railroad Company, and that it then and there purchased said lands and premises for the sum of Twelve Thousand (\$12,000.00) Dollars, from the said Santa Fe Pacific Railroad Company, and that the said Santa Fe Pacific Railroad Company, acting by and through its said attorney in fact, did make, execute and acknowledge a deed of conveyance, whereby it did convey said lands and premises to this defendant, a true and correct copy of which deed is hereunto attached, marked Exhibit "C," and this defendant asks that the same be read and considered as a part of this Answer, and that this defendant then and there paid to the said Charles J. Kinsolving, for the use and benefit of the said Santa Fe Pacific Railroad Company, the purchase price of said lands and premises, to wit, the sum of Twelve Thousand (\$12,000.00) Dollars, and that thereafter this defendant, for the purpose of acquiring the standing

timber and sawlogs situated upon said lands and premises, for the purpose of manufacturing the same into lumber, made and entered into an agreement with the defendants, Elix Lindquist and Lyn Lundquist, whereby it promised and agreed to sell said lands to the said Lindquist and Lundquist, in consideration of the said Lindquist and Lundquist cutting said standing timber into sawlogs and delivering the same to this defendant, at an agreed price per thousand, a copy of which said contract or agreement, is hereunto attached, marked Exhibit "D," and this defendant asks that the same be read and considered as a part of this Answer, and this defendant further says, that excepting the rights of the said Elix Lindquist and Lyn Lundquist under and by virtue of said contract or agreement, it is now the owner and holder of said lands and premises, and each and every part and parcel [161] thereof.

XXIX.

And this defendant further says that in all negotiations for the purchase of said lands and premises, and in all transactions connected with or concerning the purchase thereof, by this defendant, and the conveyance thereof to this defendant, this defendant acted in good faith, in the ordinary course of business, and acted without any knowledge that the complainant had, or claimed to have, any interest in, or any lien upon, or any claim to, said lands and premises, or any part or portion thereof, and accepted said deed of conveyance, and paid the purchase price of said lands and premises, and the consideration of said deed, to wit, Twelve Thousand

(\$12,000.00) Dollars, in good faith, believing that it was obtaining the title to said lands and premises, free and clear of any claim of any kind or nature, or any person whomsoever, and without any knowledge that the complainant had any claim, or made any claim, of any kind or nature whatsoever, of, to or in said premises, or any part or portion thereof.

WHEREFORE, these defendants pray judgment and decree of this court that all claims of the complainant of any claim to, interest in, and lien upon, the said lands and premises in complainant's Bill of Complaint and herein described, be held for naught and that this defendant, the Milwaukee Lumber Company, a corporation, be decreed to be the owner of said lands and premises as against any and all claims, or pretences of claims, of the complainant therein or thereto, and for such other and further relief as to this court seems meet and proper in the premises.

R. B. MORRIS,

J. H. FORNEY,

FRANK L. MOORE,

Counselors for these Answering Defendants. [162]

Exhibit "A" [to Answer to Defendant Charles J. Kinsolving et ux. et al.].

COEUR D'ALENE 06636.

THE UNITED STATES OF AMERICA.
TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

WHEREAS, the Santa Fe Pacific Railroad Company, being the owner of a tract of land situated and

included within the limits of a public forest reservation, known and officially designated as the San Francisco Mountains Forest Reserve, Arizona, has, under the provisions of the act approved June 4, 1897, entitled "An Act making appropriations for sundry civil expenses of the Government for the Fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," reconveyed and relinquished the said tract to the United States and has, under the provisions of said Act, selected in lieu thereof the following described tract of vacant public land now open to settlement, to wit:

The south half of the northwest quarter, the southwest quarter of the northeast quarter, and the northeast quarter of the southwest quarter of section nine in township forty-four north of range three east of the Boise meridian, Idaho, containing one hundred sixty acres:

NOW KNOW YE, that the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said Santa Fe Pacific Railroad Company, and to its successors, the lands above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Santa Fe Pacific Railroad Company, and to its successors and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged

by the local customs, laws, and decisions of courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, WILLIAM H. TAFT, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. [163]

GIVEN under my hand, at the city of Washington, the TWENTY-SEVENTH day of MARCH, in the year of our Lord one thousand nine hundred and ELEVEN and of the Independence of the United States the one hundred and THIRTY-FIFTH.

By the President: WM. H. TAFT,

By W. P. LeROY,

Secretary.

H. W. SANFORD,

Recorder of the General Land Office.

[United States General Land Office.]

RECORDED: Patent Number 186176.

[Endorsed]: "26340. U. S. Patent to Santa Fe Pacific Railroad Company. S. 2, N. W. 4, S. W. 4, N. E. 4, N. E. 4, S. W. 4 of Sec. 9, Tp. 44 N., R. 3 E., B. M., 160 acres. Recorded at the request of Milwaukee Lumber Co. Sep. 29, 1911, at 2 o'clock P. M., in Book '42' of Deeds, page 148, Records of Shoshone County, State of Idaho. John S. Sheehy, County Recorder." [164]

Exhibit "B" [to Answer to Defendant Charles J. Kinsolving et ux. et al.].

**POWER OF ATTORNEY TO CONVEY LIEU
LANDS.**

KNOW ALL MEN BY THESE PRESENTS, That WHEREAS, the Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress, approved March 3, 1897, has relinquished to the United States of America, under the Acts of June 4, 1897, and June 6, 1900, the following described lands located within the San Francisco Mountains Forest Reserve, Territory of Arizona, to wit:

The North Half of the Southwest quarter of section twenty-five, township eighteen north, range five east of the Gila and Salt River Base and Meridian, Arizona, containing eighty acres, more or less; and

WHEREAS, The Santa Fe Pacific Railroad Company is entitled to select, in lieu of the lands so relinquished to the United States a like quantity of vacant, surveyed, nonmineral public lands of the United States which are subject to homestead entry:

NOW, THEREFORE, The Santa Fe Pacific Railroad Company has made, constituted and appointed C. J. Kinsolving its true and lawful agent and attorney, for it, and in its name, place and stead, to convey by quitclaim deed all the right, title, interest and claim which the Santa Fe Pacific Railroad Company has, or may hereafter acquire, in the lands so selected or located by said Santa Fe Pacific Rail-

road Company, or its duly appointed attorney in fact, in lieu of the above-described tract or tracts of land relinquished as aforesaid, in whole or in part, to the full amount of the land so relinquished, as such selections shall have been actually made at the United States District Land Office and which shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., as the lieu lands so selected.

GIVING AND GRANTING unto the said attorney full power and [165] authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the above premises, as fully to all intents and purposes as it might or could do if personally present, hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

And the said Santa Fe Pacific Railroad Company to any grantee in any conveyance executed by said attorney hereby gives notice that said attorney hereunder has authority to convey, in whole or in part, only the lands actually selected in lieu of the premises hereinabove specifically described as such lands shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., and any substantial variance between the description of the lieu lands so selected, as the same shall appear described upon such public records, and the premises conveyed by said attorney as such lieu lands, shall render any conveyance of the latter hereunder void.

IN WITNESS WHEREOF, The Santa Fe Pacific Railroad Company has caused this instrument to be signed by its President and attested by its Assistant Secretary with its seal this 10th day of January, A. D. 1906.

SANTA FE PACIFIC RAILROAD COMPANY,

By E. P. RIPLEY,
President.

Attest: E. L. COPELAND, Assistant Secretary.

Signed, sealed and delivered in presence of

E. J. ENGLE,

E. C. HALL,

Witnesses.

State of Illinois,

County of Cook,—ss.

On this 10th day of January, A. D. 1906, before me, Edward J. Engle, a Notary Public in and for said County and State, personally appeared E. P. Ripley, to me personally known to be the [166] President of the Santa Fe Pacific Railroad Company, and who as such President executed the within instrument on behalf of the corporation therein named; and the said E. P. Ripley, being by me duly sworn, did say that he is the President of the said Santa Fe Pacific Railroad Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and the said E. P. Ripley acknowledged to me that such corporation executed the same, and said instrument to be

the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

EDWARD J. ENGLE,
Notary Public.

[Edward J. Engle—Notary Public, Cook County, Ills.]

My commission expires April 17, 1909.

[Endorsed]: "26339. Power of Attorney to Convey Lieu Lands. Santa Fe Pacific Railroad Company to C. J. Kinsolving. Dated Jan. 10, 1906. Recorded at the request of Milwaukee Lumber Co. Sep. 29, 1911, at 2 o'clock P. M., in Book 'F' of Powers of Attorney, page 497, Records of Shoshone County, State of Idaho. John S. Sheehy, County Recorder." [167]

Exhibit "B-1" [to Answer to Defendant Charles J. Kinsolving et ux. et al.]

**POWER OF ATTORNEY TO CONVEY LIEU
LANDS.**

KNOW ALL MEN BY THESE PRESENTS, That WHEREAS, The Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress, approved March 3, 1897, has relinquished to the United States of America, under the Acts of June 4, 1897, and June 6, 1900, the following described lands located within the San Francisco Mountains Forest Reserve, Territory of Arizona, to wit:

The North half of the Southeast quarter of section twenty-five, township eighteen north,

range five east of the Gila and Salt River Base and Meridian, Arizona, containing eighty acres, more or less; and

WHEREAS, The Santa Fe Pacific Railroad Company is entitled to select, in lieu of the lands so relinquished to the United States, a like quantity of vacant, surveyed, nonmineral public lands of the United States which are subject to homestead entry:

NOW, THEREFORE, The Santa Fe Pacific Railroad Company has made, constituted and appointed C. J. Kinsolving its true and lawful agent and attorney, for it, and in its name, place and stead, to convey by quitclaim deed all the right, title, interest and claim which the Santa Fe Pacific Railroad Company has, or may hereafter acquire, in the lands so selected or located by said Santa Fe Pacific Railroad Company, or its duly appointed attorney in fact, in lieu of the above-described tract or tracts of land relinquished as aforesaid, in whole or in part, to the full amount of the land so relinquished, as such selections shall have been actually made at the United States District Land Office and which shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., as the lieu lands so selected.

GIVING AND GRANTING unto the said attorney full power and authority to do and perform all and every act and thing whatsoever [168] requisite and necessary to be done in the above premises, as fully to all intents and purposes as it might or could do if personally present, hereby ratifying

and confirming all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

And the said Santa Fe Pacific Railroad Company to any grantee in any conveyance executed by said attorney hereby gives notice that said attorney hereunder has authority to convey, in whole or in part, only the lands actually selected in lieu of the premises hereinabove specifically described as such lands shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C.; and any substantial variance between the description of the lieu lands so selected, as the same shall appear described upon such public records, and the premises conveyed by said attorney as such lieu lands, shall render any conveyance of the latter hereunder void.

IN WITNESS WHEREOF, The Santa Fe Pacific Railroad Company has caused this instrument to be signed by its President and attested by its Assistant Secretary with its seal this 10th day of January, A. D. 1906.

SANTA FE PACIFIC RAILROAD COMPANY,

By E. P. RIPLEY,
President.

Attest: E. L. COPELAND, Assistant Secretary.

Signed, sealed and delivered in presence of

E. J. ENGLE,

E. C. HALL,

Witnesses.

State of Illinois,
County of Cook,—ss.

On this 10th day of January, A. D. 1906, before me, Edward J. Engle, a Notary Public in and for said County and State, [169] personally appeared E. P. Ripley, to me personally known to be the President of the Santa Fe Pacific Railroad Company, and who as such President executed the within instrument on behalf of the corporation therein named; and the said E. P. Ripley, being by me duly sworn, did say that he is the President of said Santa Fe Pacific Railroad Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and the said E. P. Ripley acknowledged to me that such corporation executed the same, and said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year above written.

EDWARD J. ENGLE,
Notary Public.

[Edward J. Engle—Notary Public, Cook County, Ills.]

My commission expires April 17, 1909.

[Endorsed]: "26338. Power of Attorney to Convey Lieu Lands. Santa Fe Pacific Railroad Company to C. J. Kinsolving. Dated Jan. 10, 1906. Recorded at the request of Milwaukee Lumber Co. Sep.

29, 1911, at 2 o'clock P. M., in book 'F' of Powers of Atty., page 496 Records of Shoshone County, State of Idaho. John S. Sheehy, County Recorder." [170]

Exhibit "C" [to Answer to Defendant Charles J. Kinsolving et ux. et al.].

THIS INDENTURE, Made the 15th day of September in the year of our Lord one thousand Nine Hundred and Eleven BETWEEN Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress approved March 3d, 1897, by C. J. Kinsolving, its attorney in fact of St. Maries, Kootenai County, State of Idaho, party of the first part and the Milwaukee Lumber Company, a corporation, the party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Twelve Thousand (\$12,000.00) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents demise, release and forever quitclaim unto the said party of the second part, and to its successors, heirs and assigns forever all that certain lot, piece or parcel of land, situated in the said Shoshone County of State of Idaho and bounded and particularly described as follows, to wit:

The south half of the northwest quarter, the southwest quarter of the northeast quarter, and the northeast quarter of the southwest quarter of Section Nine in Township forty-four, north of Range Three East of the Boise Meridian,

Idaho, containing one hundred and sixty acres, more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD ALL and singular the said premises, together with the appurtenances unto said party of the second part, and to its successors and assigns forever. [171]

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

SANTA FE PACIFIC RAILROAD COMPANY. (Seal)

By C. J. KINSOLVING, (Seal)

Its Attorney in Fact.

Signed, sealed and delivered in presence of

E. B. FLAGG.

M. C. PETERSEN.

State of Idaho,
County of Kootenai,—ss.

On this 27th day of September, in the year A. D. 1911, before me, M. C. Petersen, a Notary Public, in and for said County and State, personally appeared C. J. Kinsolving, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Santa Fe Pacific Railroad Company and acknowledged to me that he subscribed the name of said railroad company thereto

as principal and his own name as attorney in fact.

M. C. PETERSEN,

Notary Public in and for said County and State.

[M. C. Petersen, Notary Public, Kootenai County, Idaho.]

[Endorsed]: "26341. Quitclaim Deed—Santa Fe Pacific Railroad Company to Milwaukee Lumber Co. State of Idaho, County of Shoshone,—ss. Filed for record at the request of Milwaukee Lumber Co. on the 29th day of September, 1911, at 2 o'clock P. M. and recorded in Book '42' of Deeds, on page 149. John S. Sheehy, County Recorder." [172]

Exhibit "D" [to Answer to Defendant Charles J. Kinsolving et ux. et al.].

THIS AGREEMENT, made and entered into this 25th day of September, A. D. 1911, by and between Elix Lindquist and Lyn Lundquist, copartners doing business under the firm name and style of Lindquist & Lundquist, parties of the first part, and the Milwaukee Lumber Company, a corporation, party of the second part.

WITNESSETH: That for the consideration hereinafter mentioned the party of the second part agrees and binds itself to sell to the parties of the first part the following described tract of land, to wit: The S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, Sec. 9, T. 44 N., R. 3 E., B. M., at the agreed price of the sum of Twelve Thousand Dollars (12,000.00), to be paid as follows, to wit: Said parties agree and bind themselves to cut, skid, haul and deliver all the live merchantable white pine

timber now standing, lying or being upon said land cut into saw logs according to directions to be furnished by second party, which said timber and logs are to be delivered into the waters of the St. Joe River at the mouth of Marble Creek; said logs to be not less than eight inches in diameter, nor to scale less than sixty-five per cent sound and live white pine timber. It is agreed and understood that the second party will allow first party the price of eleven dollars per thousand feet for logs averaging not more than six and one-half logs to the thousand feet, smaller white pine logs to be paid for at the rate of nine dollars per thousand feet; all logs to be scaled by the "Scribner C" rule and payments made and advanced thereon as follows: Upon said logs being skidded upon the bank of Marble Creek there shall be advanced thereon the sum of nine dollars per thousand feet based upon a scale to be made by a scaler agreed upon by the parties hereto, or in case they cannot agree then by the State scaler who shall make weekly reports of his scale to each party hereto and once every thirty days during the life of this contract there shall be advanced upon the logs scaled the thirty days immediately preceding said date which date shall be as soon as may be upon or after the tenth day of each and every month during the life of said contract the said sum of nine dollars per thousand feet for all logs scaled the previous thirty days and upon which no advancements shall have been made; said advancements of nine dollars per thousand feet to be made as follows: The sum of four dollars per thousand feet is to be retained and

to be applied upon the purchase of said land, the remaining five dollars to be advanced and paid to first parties, the remainder of the price of said logs is to be retained by second party until said logs are delivered into the waters of the St. Joe River as aforesaid, and in case the sum of four dollars per thousand feet is not sufficient to pay the purchase price of said land the second party shall have the right to apply the said remainder or sufficient portion thereof to discharge the purchase price of said land. It is understood, however, that parties of the second part are to be saved harmless on account of any labor or supply liens, claims or demands and that before making any such payments upon said logs the parties of the first part shall satisfy the second party that there are no claims against said logs which might become liens and said second party shall have the right to apply such advancement to the discharge of any debt or claim which might become a lien upon said logs before paying any portion thereof to first party. It is understood and agreed that the title to said lands shall remain in the Milwaukee Lumber Company until the said full sum of Twelve Thousand Dollars has been paid according to the terms and conditions of this contract, and upon the payment of said sum and upon the fulfillment of all conditions and covenants in this contract the said Milwaukee Lumber Company agrees and binds itself to convey said land by a quitclaim deed to first parties or to any person that they shall direct. It is understood and agreed that said logs shall be scaled by a scaler to be agreed upon by the parties to this

contract and in case of failure to agree the State scaler shall perform said work and that weekly reports shall be made to each party hereof of the scale of said logs and each party shall share equally the expense of any such [173] scaler under this contract except that first parties are to furnish board and sleeping accommodations to any such scaler or check scaler employed upon said work, free of charge. Said timber is to be delivered not later than the Spring drive of the year 1912; said first parties are to disclose to second party all supply bills and unpaid labor upon the logs in question at any time when requested so to do by second party for the purpose of protecting them against liens and in making the payments and advancements aforesaid and in case said labor and supply bills exceed the amount upon the skids at any time the entire amount of said advancements shall be retained to apply on said liens or claims and no part thereof shall be payable to second party until such time as said advancements exceed the amount of any claims which might become liens upon said logs at which time any balance is to be paid to the first parties, except the four dollars aforesaid. The parties of the first part shall have the right to assign this contract and the benefits thereof to the Lumberman's State Bank for the purpose of securing any advancements made by said bank to them which said right and assignment shall be subject of all the conditions of this contract.

This contract shall bind the heirs, personal representatives, executors and assigns of the parties thereto.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed, sealed and delivered this 25th day of September, A. D. 1911.

ELIX LINDQUIST.

LYN LUNDQUIST.

MILWAUKEE LUMBER CO. (Seal)

By A. E. BRADRIK. (Seal)

Attest: E. B. FLAGG.

[Endorsed]: Filed October 5, 1912. A. L. Richardson, Clerk. By M. W. Griffith, Deputy. [174]

*In the District Court of the United States for the
Northern Division, District of Idaho.*

McGOLDRICK LUMBER COMPANY, a Corporation,

Plaintiff,

vs.

CHAS. J. KINSOLVING and JANE DOE KINSOLVING (Whose Real Name is Unknown), His Wife; MILWAUKEE LUMBER COMPANY, a Corporation; JOHN DOE LUNDQUIST (Whose True Name is Unknown), and RICHARD ROE LINDQUIST (Whose Real Name is Unknown), JOHN DOE (Whose Real Name is Unknown), and RICHARD ROE (Whose True Name is Unknown),

Defendants.

Answer of Lyn Lundquist and Elix Lindquist.

Answer of Lyn Lundquist and Elix Lindquist, doing business under the firm name and style of Lundquist and Lindquist, two of the above-named

defendants to the bill of complaint of the McGoldrick Lumber Company, complainant.

These defendants now and at all times hereafter saving to themselves all, and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering says:

I.

That the defendants are and were at the time the bill was filed interested in the subject matter of this suit by virtue of a certain written contract of sale, made and executed on the 25th day of September, 1911, by and between Elix Lindquist and Lyn Lundquist, [175] copartners, doing business under the firm name and style of Lindquist & Lundquist, as parties of the first part, and the Milwaukee Lumber Company, a corporation, parties of the second part, a copy of which contract is hereto attached and marked Exhibit "A," and expressly made a part hereof.

II.

These defendants admit that the McGoldrick Lumber Company is a corporation, organized under the laws of the State of Washington, and that the subject matter of the suit consists of real estate, situated in the County of Shoshone, State of Idaho, and is as described in plaintiff's bill of complaint and of the reasonable value of Five Thousand (\$5,000.00) Dollars.

III.

These defendants admit that on the 26th day of September, 1906, John Shannon made and filed in the United States Land Office at Coeur d'Alene, Idaho, his timber and stone application for the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 9, Township 44 N., Range 3 E., W. M., being the lands involved in this controversy, and that said timber and stone application was in the manner and form prescribed by law, and executed in conformity to the rules and regulations described by the Department of the Interior for the entry of lands under the Act of Congress dated June 3, 1878 (20 Stats. at L. 89), and that Exhibit "A" of plaintiff's complaint is a copy of said application.

IV.

These defendants admit that final proof on said timber and stone application was made in accordance with the rules and regulations of the Department of the Interior, and was in due form, and that Exhibit "B" attached to plaintiff's complaint is a copy thereof, but deny that the said John Shannon then and there in all ways complied with the law governing the entry of public lands under the timber and stone laws and the rules and regulations of the United [176] States or Department of the Interior governing entry of lands under said act, and deny that said Shannon made a valid or legal entry or purchase of said lands, and deny that the said John Shannon thereupon became or was the owner in equity or otherwise of said lands or was entitled to have issued or delivered to him letters patent

under the seal of the United States conveying unto him or to his heirs legal title to said lands in fee simple absolute or at all.

V.

Deny that on the 25th day of ———, 1907, Roy Lammers, acting as agent of complainant, purchased said land from said entryman for the sum of Eight Thousand (\$8,000.00) Dollars, and deny that the said John Shannon then and there by warranty deed conveyed said land to Lammers, but admit that a copy of said alleged deed is attached to complainant's bill of complaint and marked Exhibit "C," but deny that said Lammers took title to said land as trustee for complainant or at all, and deny that said Roy Lammers thereafter conveyed said land to the McGoldrick Lumber Company and deny that the said McGoldrick Lumber Company is now or ever has been the owner in equity or otherwise of said land, or at all, and deny that it is entitled to possession thereof and deny that it is entitled to receive or to be vested with legal title thereto, through a conveyance of said legal title from the United States of America, by its proper officers to the said John Shannon, or at all.

VI.

Deny that the McGoldrick Lumber Company was a *bona fide* purchaser of said land for value without notice of any defect in the title or relied upon by the receiver's receipt issued to the said John Shannon, and avers that it was incumbent upon said McGoldrick Lumber Company to ascertain whether said receiver's receipt was issued upon such representa-

tions, which if true would entitle the said Shannon to a patent for said land from the United States.

VII.

Admit that on the 16th day of July, 1907, the defendant [177] Chas. J. Kinsolving filed his affidavit of contest against the said entry, which affidavit is in words and figures as set forth in said bill of complaint.

VIII.

Admit that notice of hearing was given in the manner and form as set forth by Complainant's Exhibit "D" and that on May 13, 1908, a hearing was had before the Register and Receiver, United States Land Office, Coeur d'Alene, Idaho, at which hearing evidence was introduced in behalf of the contestant Chas. J. Kinsolving, and in behalf of the entryman John Shannon and in behalf of Roy C. Lammers and the McGoldrick Lumber Company; but as to whether such evidence so introduced at the said hearing was in strict conformity with the proceedings attached to plaintiff's complaint and marked Exhibit "E," these defendants have no knowledge or information upon which to form a belief and therefore deny the same.

IX.

Admit that the Register and Receiver, United States Land Office, at Coeur d'Alene, Idaho, reviewed the evidence adduced at such hearing and rendered a decision thereon in favor of the contestant Chas. J. Kinsolving and recommended the cancellation of said entry, and admit that a copy of said decision

is contained in Complainant's Exhibit "F" attached to said complaint.

X.

Admit that at the beginning of such proceedings before the Register and Receiver, the McGoldrick Lumber Company demurred to the affidavit of contest on the ground that the statements therein made were insufficient to support a contest or any order looking to the cancellation of said entry and objected to the Register and Receiver hearing proof thereon, which demurrer was overruled, but deny that the subsequent introduction of testimony by the contestant Chas. J. Kinsolving was against the rights of complainant or that the said Register and Receiver committed any error of law prejudicial of the [178] rights of the said McGoldrick Lumber Company, complainant herein.

XI.

Admit that at said hearing a certified copy of a contract between the entryman John Shannon and Wm. McCarter was offered in evidence and that a copy of said contract is attached to plaintiff's bill and marked Exhibit "A," admit that complainant objected to said offer upon the grounds set forth in Exhibit "E," and that said objection was sustained, but deny that in making and rendering their decision, the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, treated said contract as in evidence.

XII.

Admit that at the conclusion of plaintiff's testimony in said contest case, complainant herein moved

for the dismissal of the contest on the ground that no evidence was introduced to affect the validity of the entry made by John Shannon, and admit that the Register and Receiver overruled said motion, but deny that in overruling said motion the Register and Receiver committed any error of law prejudicial to the rights of complainant herein.

XIII.

Admit that after the conclusion of the taking of the testimony before the Register and Receiver, complainant herein renewed its motion to dismiss said proceedings and admit that the said Register and Receiver overruled said motion, but deny that they erred in law thereby to the prejudice of the rights of complainant herein or at all.

XIV.

Admit that the said Register and Receiver found that said entry was made for speculative purposes and not for the sole and exclusive use or benefit of said applicant, but deny that said decision was wrongful or unlawful or contrary to the evidence adduced at said hearing and deny that there was an insufficiency of evidence to support the finding that John Shannon did not make the entry for his own sole and exclusive benefit, and deny, in making the findings, [179] the law applicable to such case was misinterpreted, or that such finding was without evidence to support it, and avers that the decision of the Register and Receiver in said case was proper and in accordance with the law and facts in the case.

XV.

Admit that thereafter said case was appealed to

the Commissioner of the General Land Office at Washington, D. C., and that said Commissioner affirmed the said decision of the Register and Receiver and that said affirmation of said decision is set forth in Exhibit "G" attached to complainant's complaint.

XVI.

Deny that the Commissioner of the General Land Office in rendering said decision treated or considered said contract as in evidence or that any error of law prejudicial to the rights of complainant was committed; and deny that the said Commissioner ignored the evidence adduced at said hearing and avers that said decision as set forth in Complainant's Exhibit "G" was justified by the law and the facts in the case.

XVII.

Admit that thereafter said case was appealed to the Secretary of the Interior and that thereafter said decision was affirmed by said Secretary of the Interior, and that Exhibit "H" attached to the complainant's bill of complaint is the decision of said Secretary.

XVIII.

Deny that said decision was erroneous in law or was influenced by said contract or that it was not in strict accordance with the law and fact in the case.

XIX.

Admit that thereafter, to wit, on the 25th day of October, 1910, the defendant Kinsolving filed a lieu selection on said land and that thereafter he received a patent from the United States for said land, and

admit that the said Kinsolving thereafter held the legal title and still holds said legal title except as hereinafter set forth. [180]

XX.

Admit that the Milwaukee Lumber Company has some interest in said premises described.

XXI.

Further answering plaintiff's bill and amended and supplemental bill, these defendants admit that on or about the 15th day of September, 1911, the defendant Charles J. Kinsolving executed an instrument of conveyance of the property hereinbefore described to the Milwaukee Lumber Company and that said instrument of conveyance is recorded in the County of Shoshone *County*, State of Idaho, in Book 42, page 149, of the records of said county, but deny that said transfer was without consideration or in fraud of the rights of complainant or was made by or through a conspiracy on the part of said defendants, to defraud the rights of complainant.

XXII.

Admit that said land is largely valuable for the timber growing thereon.

XXIII.

Deny that Chas. J. Kinsolving or the said Milwaukee Lumber Company, or their agents, entered on the said premises October 1, 1911, or at all, for the purpose of carrying out said alleged conspiracy or to defraud the rights of complainant or at all, but admit that John Doe Lundquist, whose true name is Lyn Lundquist, and Richard Roe Lindquist, whose true name is Elix Lindquist, entered upon said prem-

ises about October 1, 1911, in accordance with the terms of a written contract of sale made and entered into September 25, 1911, by and between Elix Lindquist and Lyn Lundquist and the Milwaukee Lumber Company, a copy of which is hereto attached and marked Defendants' Lundquist and Lindquist, Exhibit "A," and made a part of this answer, and thereupon commenced to cut and remove the timber from said land for the purpose of converting said timber into lumber, and alleges that upon entering said land they did so in accordance with the terms of said written contract for the purpose of removing [181] the timber therefrom for profit to themselves, and allege that they continued to cut and remove and prepare to cut and remove the timber from said land until enjoined from proceeding further with said logging operation by an order of this Court.

XXIV.

Alleges that said injunction was wrongfully and unlawfully sued out of this court, to the great damage of these answering defendants in the sum of Twelve Thousand (\$12,000.00) Dollars.

XXV.

And these defendants deny all and all manner of unlawful or irregular proceedings upon the part of the Register and Receiver, Commissioner of the General Land Office, or of the Secretary of the Interior in rendering the decisions which have been rendered and which are attached to complainant's complaint and made a part thereof, and deny that the said Shannon made or perfected the said timber or stone entry in good faith or for his own use and

benefit, or that any error of law was committed in the opinions deciding said contest case.

WHEREFORE, these defendants ask that the plaintiff's bill may be dismissed at its costs, and that these defendants' title in and to the said land under and by virtue of the said contract be confirmed as against any title of plaintiff.

A. G. ELSTON,

Attorney for Lyn Lundquist and Elix Lindquist. [182]

Exhibit "A" [to Answer to Lyn Lundquist et al.].

THIS AGREEMENT, made and entered into this 25th day of September, A. D. 1911, by and between Elix Lindquist and Lyn Lundquist, copartners, doing business under the firm name and style of Lindquist & Lundquist, parties of the first part, and the Milwaukee Lumber Company, a corporation, party of the second part.

WITNESSETH: That for the consideration hereinafter mentioned the party of the second part agrees and binds itself to sell to the parties of the first part the following described tract of land, to-wit: S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, Sec. 9, T. 44 N., R. 3, E. M., at the agreed price of the sum of Twelve *Thousand* (\$12,000.00) to be paid as follows, to wit: Said parties agree and bind themselves to cut, skid, haul and deliver all the live merchantable white pine timber now standing, lying or being upon said land cut into sawlogs according to directions to be furnished by second party, which said timber and logs are to be into the waters of the St. Joe River at

the mouth of Marble Creek; said logs to be not less than eight inches in diameter, nor to scale less than sixty-five per cent sound and live white pine timber. It is agreed and understood that the second party will allow first party the price of eleven dollars per thousand feet for logs averaging not more than six and one-half logs to the thousand feet, smaller white pine logs to be paid for at the rate of nine dollars per thousand feet; all logs to be scaled by the "Scribner C" rule and payments made and advanced thereon as follows: Upon said logs being skidded upon the bank of Marble Creek there shall be advanced thereon the sum of nine dollars per thousand feet, based upon a scale to be made by a scaler agreed upon by the parties thereto, or in case they cannot agree then by the State Scaler, who shall make weekly reports of his scale to each party thereto, and once every thirty days during the life of this contract there shall be advanced upon the logs scaled the thirty days immediately preceding said date, which said date shall be as soon as may be upon or after the tenth day of each and every month during the life of said contract the said sum of nine dollars per thousand feet for all logs scaled the previous thirty days and upon which no advancement shall have been made; said advancement of nine dollars per thousand feet to be made as follows: The sum of four dollars per thousand feet is to be retained and to be applied upon the purchase of said land, the remaining five dollars to be advanced and paid to first parties, the remainder of the price of said logs is to be retained by second party until said

logs are delivered into the waters of the St. Joe River as aforesaid and in case the sum of four dollars per thousand feet is not sufficient to pay the purchase price of said land the second party shall have the right to apply the said remainder or sufficient portion thereof to discharge the purchase price of said land. It is understood, however, that parties of the second part are to be saved harmless on account of any labor or supply liens, claims or demands, and that before making any such payments upon said logs the parties of the first part shall satisfy the second party that there are no claims against said logs which become liens and said second party shall have the right to apply such advancement to the discharge of any debt or claim which might become a lien upon said logs before paying any portion thereof to first party. It is understood and agreed that the title to said lands shall remain in Milwaukee Lumber Company until the said full sum of *Twelve Dollars* has been paid according to the terms and conditions of this contract and upon the payment of said sum, and upon the fulfillment of all covenants in this contract the said Milwaukee Lumber Company agrees and binds itself to convey said land by a quitclaim deed to first parties or to any person that they shall direct. It is understood and agreed that said logs shall be scaled by a scaler to be agreed [183] upon by the parties to this contract and in case of failure to agree the State Scaler shall perform said work and that weekly reports shall be made to each party thereto of the scale of said logs and each party shall share equally the ex-

pense of any such scaler under this contract except that the first parties are to furnish board and sleeping accommodations of any such scaler or check scaler employed upon said work, free of charge. Said timber is to be delivered not later than the spring drive of the year of 1912; said first parties are to disclose to second party all supply bills and unpaid labor upon the logs in question at any time when requested so to do by second party for the purpose of protecting them against liens and in making the payments and advancements aforesaid, and in case said labor and supply bills exceed the amount upon the skids at any time, the entire amount of said advancement shall be retained to apply on said liens or claims, and no part thereof shall be payable to second party until such time as said advancements exceed the amount of any claims which might become liens upon said logs at which time any balance is to be paid to the first parties except the four dollars aforesaid, the parties of the first part shall have the right to assign this contract and the benefits thereof to the Lumberman's State Bank for the purpose of securing any advancements made by said bank to them which said right and assignment shall be subject to all the conditions of this contract.

This contract shall bind the heirs, personal representatives, executors and assigns of all the parties thereto.

In witness whereof the parties hereto have caused this contract to be signed, sealed and deliv-

ered this 25th day of September, A. D. 1911.

ELIX LINQUIST.

LYN LUNDQUIST.

MILWAUKEE LUMBER CO.

By A. V. BRADRICK,

Sec.

Attest: O. B. FLAGG.

Service of the within Answer, by copy, is hereby admitted this 16th day of Nov., 1912.

HAPPY, CULLEN, LEE & HINDMAN,

Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 23, 1912. A. L. Richardson, Clerk. [184]

*In the District Court of the United States for the
District of Idaho, Northern Division, Holding
Terms at Coeur d'Alene.*

IN EQUITY—No. —.

McGOLDRICK LUMBER CO., a Corporation,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING et al.,
Defendants.

**Replication to Answer of Defendants Charles J.
Kinsolving, Jane Doe Kinsolving, His Wife, and
the Milwaukee Lumber Company.**

The Replication of the above-named complainant to the answer of the above-named defendants, Charles J. Kinsolving and Jane Doe Kinsolving, his wife, and the Milwaukee Lumber Company, a corporation, defendants:

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

F. M. DUDLEY,
HAPPY, CULLEN, LEE & HINDMAN,
Solicitors for Complainant. [185]

*In the District Court of the United States for the
District of Idaho, Northern Division, Holding
Terms at Coeur d'Alene.*

McGOLDRICK LUMBER CO., a Corporation,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING et al.,
Defendants.

**Affidavit of Service [of Replication to Answer of
Defendants Charles J. Kinsolving et ux.].**

State of Washington,
County of Spokane,—ss.

Mollie Remington, being duly sworn, deposes and says: That she is a citizen of the United States, over the age of twenty-one; not a party to the above-entitled action, and competent to be a witness herein; that on October 4th, 1912, in Spokane, Washington, she served the enclosed replication on Messrs. Forney & Moore, attorneys for the defendants, Charles J. Kinsolving and Jane Doe Kinsolving, his wife, by then and there depositing in the United States mail a true and correct copy of the said replication in a sealed envelope, properly addressed to Messrs. Forney & Moore, Moscow, Idaho, with the postage thereon duly prepaid.

MOLLIE REMINGTON.

Subscribed and sworn to before me this 24th day
of October, 1912.

B. A. HOFFINE,
Notary Public in and for the State of Washington,
Residing at Spokane.

[Endorsed]: Filed Oct. 26, 1912. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy Clerk.
[186]

*In the District Court of the United States for the
District of Idaho, Northern Division, Holding
Terms at Coeur d'Alene.*

No. —.

McGOLDRICK LUMBER CO., a Corporation,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING et al.,

Defendants.

**Replication to Answer of Defendants Lyn
Lundquist and Elix Lindquist.**

The Replication of the above-named complainant to the answer of the defendants, Lyn Lundquist and Elix Lindquist.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as

this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

F. M. DUDLEY,
HAPPY, CULLEN, LEE & HINDMAN,
Solicitors for Complainant.

[Endorsed]: Filed Dec. 4, 1912. A. L. Richardson, Clerk. [187]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Plaintiff,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation,
Defendants.

Decision.

Feb. 6, 1914.

F. M. DUDLEY, CULLEN, LEE & FOSTER,
and JOHN P. GRAY, Attorneys for Plain-
tiff.

FORNEY & MOORE, R. B. NORRIS, and A. G.
ELSTON, Attorneys for Defendants.

DIETRICH, District Judge:

In overruling the demurrer to the complaint without prejudice to the further consideration of the points urged, it was hoped from the answer, and the evidence to be adduced, a measure of light might be

thrown upon the perplexing questions presented by the record in the land office. But it now turns out that, with unimportant exceptions, a complete copy of this record was exhibited together with the bill, and the evidence since taken lends little, if any, assistance; consequently the questions still are substantially those raised by the demurrer.

There is little controversy touching the general principles of law by which courts are guided and limited in their interference with the proceedings of the land department, the real [188] question being one of the application of such principles to the facts and circumstances of the case. An extended review of the transactions involved is not thought to be necessary. I am unable to yield to the plaintiff's contention that the Shannon-McCarter agreement was not before the land department. True, objections to its introduction were sustained by the Register and Receiver, but such ruling, as I understand the practice, did not operate to exclude the exhibit from the record, and it is apparent from the opinion of the Assistant Commissioner that he took it into consideration. Furthermore, I think that under the liberal rules of evidence prevailing in the land department the offer was competent; that the instrument was material is not open to serious question. Not that it directly pertains to the specific entry under consideration, or is conclusive of the invalidity thereof, but at least it is a circumstance strongly tending to disclose the entryman's attitude toward the law, and his willingness to enter into such an unlawful arrangement as is here charged.

It is further to be remarked that unless the conclusion reached in the land office is adopted, Johnson's relation to the entry remains an unsolved mystery. Both his explanation and that of Shannon of his interest are wholly unworthy of credence, and the characterization of their testimony in this respect by the Assistant Commissioner is fully warranted.

The view I have taken of the entire record in the land department is about this: Upon strict analysis, and under the rules prevailing in courts of law, the evidence is insufficient to support a finding that Shannon entered into any agreement or arrangement violative of the law, as the same has been construed in the Budd and Williamson cases; at least affirmative relief upon such a theory would be unwarranted. And still the circumstances, remote and meager though they may be, are such that the mind has difficulty in escaping the general impression that there existed some sort of illegitimate relation between Johnson and Shannon [189] touching this entry. That they were of the opinion that there was something to cover up is scarcely open to doubt. In a sense, as long as the controversy was in the land department, Shannon was seeking affirmative relief,—the burden was upon him to show that he was entitled to receive the patent which he sought to have issued. The officers of the land department were within their rights in requiring of him a candid disclosure of his relations with Johnson, and of the source from which he received the money with which he paid the purchase price of the land, in order that they might from such facts intelligently determine

whether or not he was entitled to patent. Such a disclosure he declined to make. Moreover, in its investigation of the facts, the Department is not necessarily bound by the strict rules of evidence prevailing in courts of law, and clearly the standard or measure of proof required in suits in equity to cancel patents is not demanded in a proceeding such as this in the land office. It was not necessary here to overthrow the presumptions attending a patent, for the very good reason that no patent had been issued. That class of cases, therefore, of which the Maxwell Land Grant case is a conspicuous example, is not in point.

Added to the considerations already suggested is the further one that the Register and Receiver, the Assistant Commissioner, and the First Assistant Secretary of the Interior, some of whom at least were learned in the law, and whose integrity is not called into question, acting successively, all reached the same conclusion. Evidence having such potency should not be held to be unsubstantial or without probative value except for the clearest and most cogent reasons.

It is true that Johnson's part in the transaction could be explained as well by assuming that he entered into some sort of an agreement with Shannon after the entry was initiated, and before final proof, as by assuming that such an agreement was made [190] prior to the entry; and at the time the demurrer was passed upon it was thought that possibly the land officials had disposed of the proceeding without regard to the principle enunciated in the

Williamson case, but *it now* called to my attention that the Williamson case was decided prior to any one of the three decisions in the land department, and therefore it cannot be assumed that the rule announced in the Williamson case was unknown to the land department, nor is it to be presumed that the officers wilfully disregarded it. In that view, the action of the department cannot be set aside upon the theory that it was based upon an erroneous view of the law. Indeed, there seems to be but a single question, and that is, whether or not there was any substantial evidence to support the conclusion reached by the land officers, and while the proofs are meager in the extreme, still, for the reasons already stated, it is not thought that a finding that the department acted arbitrarily would be warranted. As a rule, fraud is susceptible of proof only by means of circumstantial evidence and, as suggested in the memorandum decision upon the demurrer, the circumstances are sufficient at least to arouse suspicion, and in this particular case they seem to have been sufficient to produce conviction in the minds of those who were charged with the responsibility of disposing of the public lands, and who appear to have had no reason or motive for doing an injustice in the premises. In this aspect the case is not substantially unlike that of *Bailey v. Sanders* (228 U. S. 603), as will more clearly appear from an examination of the record and the opinion on file in this court. It was there contended by the plaintiff that the department had committed a "gross mistake of fact," and in the opinion rendered January

4, 1908, after a review of the few cases in which this phrase is found, it was said: "If the view most favorable to the plaintiff be adopted, namely, that the Courts will revise the action of the Land Department where there has been [191] a 'gross mistake of fact,' is such a mistake disclosed by the record here? Whatever may be the precise definition and meaning of this phrase, it certainly cannot be held to embrace a mere insufficiency of the evidence to support a finding. It must imply a willingness on the part of the officer to favor one party as against the other, or a carelessness amounting to a wanton disregard of a party's legal rights.

"Is any such disposition on the part of the Secretary of the Interior, or, indeed, of any of the officers of the Land Department, exhibited by the record in this case? It may be that the evidence is meager; and, indeed, it is possible that upon an application of the strict rules of evidence which obtain in the courts, it might be held that the finding of the Secretary is not sufficiently supported; that I do not decide. But it is clear that the Secretary of the Interior was not actuated by any corrupt or improper motive, and that, on the other hand, after a painstaking examination of the record, he was convinced that the facts justified the finding complained of, and that in cancelling the entry he sincerely believed substantial justice was being done. While it may be that the evidence is not sufficient to show an unlawful agreement, it cannot be said that there was not any evidence tending to support such finding. . . .

"That is, substantially, all the direct testimony

given relative to the alleged agreement. It is vague and inconclusive, and yet, even considering it apart from other circumstances, it is difficult to escape the conclusion that some kind of an agreement was entered into concerning the sale of the land. . . .

“It is an elementary rule that where circumstantial evidence leaves an issue in doubt, and one of the parties to the controversy has, in his exclusive possession, documentary evidence, or, within his knowledge, facts, which if disclosed would clear up the doubt, his failure to produce such documents or to disclose such knowledge, warrants the tribunal in resolving the doubt against him; and this rule applies with all the more force to [192] proceedings in the Land Department where there are lacking some of the means at the command of the Courts for compelling the production of evidence. *Smith vs. Brearly*, 9 L. D. 175. *United States vs. Sawbridge*, 11 L. D. 579.”

These views appear to be pertinent to the present case, and are still thought to be sound. It is accordingly held that the bill must be dismissed.

[Endorsed]: Filed February 6, 1914. A. L. Richardson, Clerk. [193]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 519.

McGOLDRICK LUMBER COMPANY,
Plaintiff,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation,
Defendants.

Judgment of Dismissal.

This cause came on for final hearing before the Court, and the court upon due consideration of the bill, the answer, the replication, the evidence, and the arguments of counsel doth now

ORDER, ADJUDGE AND DECREE that this suit be and the same is hereby dismissed with costs to the defendants, to be taxed.

Dated this 9th day of March, 1914.

FRANK S. DIETRICH,
Judge.

Costs taxed at \$123.20.

[Endorsed]: Filed March 9, 1914. A. L. Richardson, Clerk. [194]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING, and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, and LYN
LUNDQUIST and ELIX LINDQUIST,
Defendants.

**Statement of Evidence to be Included in Record on
Appeal.**

The above-entitled cause came on for trial and hearing before the District Court of the United States for the District of Idaho, Northern Division, Honorable Frank S. Dietrich, presiding, on the 2d day of December, 1913, said Judge sitting without a jury. The following appearances were made: F. M. Dudley, W. E. Cullen and John P. Gray, appeared as solicitors for complainant, and Forney & Moore and R. B. Norris appeared as solicitors for defendants, and the other defendants appeared not.

Thereupon witnesses were called, sworn and examined and the following testimony was introduced in said cause:

The COURT.—I am not clear, gentlemen, just what the status of this case is.

Mr. GRAY.—The case was at issue, and it was referred, and no testimony was taken excepting cer-

tain things were stipulated, and then upon stipulation it was agreed that [195] any other or further testimony might be taken before the Court.

Mr. MOORE.—The proceedings before the Commissioner are fully covered, I think, by this stipulation, with the exception of perhaps one or two little matters, but I desire to say to the Court that a hasty examination of the bill of complaint, which purports to set up all the proceedings taken in the matter of a contest between John Shannon, the original entryman, and one of the defendants, Kinsolving, in the land office, shows that some of the exhibits are not there, that some exhibits were offered and rejected by the local officers, and under their practice became a part of the record any way, but I find that practically all of the exhibits attached to the complaint are Exhibits "A," "B," "C," "E," and "H," and then there are absent Exhibits "F" and "G," and an Exhibit "I." We had a stipulation at one time that all of the absent exhibits might be filed subsequently as a part of the bill of complaint, and I think perhaps two of those exhibits were filed.

Whereupon it was agreed in open court that any exhibits referred to in the testimony in said contest case in the United States Land Office at Coeur d'Alene, Idaho, in which Charles J. Kinsolving was contestant and John Shannon contestee, might be supplied at any time prior to the time briefs were presented to the Court, and that a certified copy of said Exhibit "I" should be procured from the General Land Office and filed in the case.

The COURT.—When this record is made up, if

this letter isn't here it may or may not be considered highly material, but you will have to proceed now in some way, and you can supply this letter later on.
[196]

There was thereupon presented to the Court two stipulations between the parties to this action. The two stipulations were in words and figures as follows, to wit:

“In the Circuit Court of the United States for the Ninth Circuit, District of Idaho, Northern Division, Holding Terms at Coeur d’Alene.

McGOLDRICK LUMBER CO.,

Complainant,

vs.

CHARLES J. KINSOLVING and JULIA E. KINSOLVING, His Wife; MILWAUKEE LUMBER COMPANY, a Corporation, JOHN DOE LUNDQUIST (Whose True Name is Unknown); and RICHARD ROE LINDQUIST (Whose True Name is Unknown), and JOHN DOE (Whose Real Name is Unknown), and RICHARD ROE (Whose True Name is Unknown),

Defendants.

Stipulation [Re Testimony Taken Before Register and Receiver, etc.].

IT IS HEREBY STIPULATED, by and between the respective parties hereto, by and through their respective attorneys, as follows, to wit:

1. It is stipulated and agreed that the transcript of the testimony attached to the complainant's Bill

of Complaint, together with the exhibits attached to said transcript, is a full, true and correct transcript of the testimony taken before the Register and Receiver, and of the exhibits referred to in the said testimony, and that the same may be used as such upon the full hearing of this cause, and as if given in proof herein before the said referee, including supplemental exhibits, [197] etc., and that the witnesses would testify as therein set out in said transcript and said testimony used as the testimony in this court.

2. It was further stipulated and agreed that Roy C. Lammers was the agent of the complainant, McGoldrick Lumber Company in making the purchase of the said land, and that whatever title he acquired by said purchase was acquired for and in behalf of said complainant, and in its interest, and the said complainant is the real party in interest in said controversy, and that the said title so acquired and the said purchase thereof was made in behalf of said complainant by the said Roy C. Lammers, as detailed in the transcript of the testimony attached as an exhibit to complainant's Bill of Complaint, and under the said circumstances, and that the payment for the same was made by the said Roy C. Lammers in behalf of said complainant, and the deeds therefor placed of record as set forth therein. The said defendants reserving only all objections as to materiality and relevancy.

The object of this stipulation is to avoid the necessity of complainant's taking proof upon said matters and things, and to enable the said complainant to

submit its cause upon its Bill of Complaint, and upon the admissions made in the said Answers, and this stipulation, without any waiver, however, upon the part of the said defendants to argue as a matter of law the legal effect of their said denials contained in their said Answers, and also without waiving any rights which the said defendants Lundquist and Lindquist may have to continue said action for damages, [198] or to institute other and further actions for damages, which might lie in their behalf.

Dated this 26th day of April, A. D. 1913.

Signed: F. M. DUDLEY,

CULLEN, LEE & HINDMAN,

Attorneys for Complainant.

FORNEY & MOORE,

Attorneys for Defendants, Kinsolving and Milwaukee Lumber Co.

A. G. ELSTON,

Attorney for Lundquist and Lindquist.”

*“In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING et al.,

Defendants.

Stipulation [Re Trial of Cause, etc.].

WHEREAS, part of the testimony for complainant has been taken in this case, and whereas the further taking of testimony was continued because of the illness of one Herrick, an officer of the Milwau-

kee Lumber Company, one of the defendants, and whereas the further taking of testimony has been continued by consent of counsel:

NOW, THEREFORE, it is agreed between the parties that the said case shall be tried before the Court at the next regular term of the above court at Coeur d'Alene, [199] Idaho, upon the testimony heretofore taken by the complainant and such other testimony as it may desire, and upon the testimony of the defendants.

Signed: W. E. CULLEN,
F. M. DUDLEY,
JOHN P. GRAY,
Attorneys for Complainant.
FORNEY & MOORE,
Attorneys for Defendants."

Whereupon an agreement between the Milwaukee Lumber Company and Charles H. Kinsolving was marked Plaintiff's Exhibit No. 1, offered and received in evidence.

[Testimony of W. H. Batting, for Plaintiff.]

W. H. BATTING, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct Examination by Mr. GRAY.

My name is W. H. Batting. I reside at Coeur d'Alene, Idaho, and I am Register of the United States Land Office and have charge of the original records of that office. I have the tract-book and serial register from among my office records here. The tract-book shows applications made for public lands in this district, together with a serial number

(Testimony of W. H. Batting.)

for each selection. The serial register shows that the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 9, Township 44 North, Range 3 E., B. M., was filed on by the Santa Fe Pacific Railway Company October 25, 1910, as a lieu selection, serial number 06636, in lieu of lands in Arizona patented March 22, 1911, and also shows the number of the patent. The serial register number 06636 shows that the Santa Fe Pacific Railway Company, by [200] Charles J. Kinsolving, attorney in fact, of St. Maries, Idaho, filed this lieu selection under the Act of June 4, 1897, for the same land, shows the date of filing, and the history of the case and the date of patent; filed October 25th, 1910, on which date notice was issued for publication to the "Santa Times," I think December 10, 1910, as the date for final proof. The selection was transmitted to the general land office with the returns for October, 1910. December 13, 1910, proof of posting and publication was filed. Certificate of posting in the land office was issued. February 11, 1911, the foregoing papers were transmitted to the general land office. On March 7, 1911, by letter K, the commissioner of the general land office approved the selection. March 27, 1911, patent No. 186176, issued. June 15, 1911, this patent was delivered to C. J. Kinsolving.

Whereupon a quitclaim deed from the Santa Fe Pacific Railroad Company by C. J. Kinsolving, its attorney in fact, to Milwaukee Lumber Company was marked Plaintiff's Exhibit No. 2, offered and

(Testimony of W. H. Batting.)

received in evidence.

Whereupon the powers of attorney from the Santa Fe Pacific Railroad Company to C. J. Kinsolving were marked Plaintiff's Exhibits 3 and 4 were offered and received in evidence, and patent from the United States to the Santa Fe Pacific Railroad Company was marked Plaintiff's Exhibit No. 5, offered and received in evidence. Copies of which said exhibit are attached hereto. [201]

Cross-examination by Mr. MOORE.

Some of the entries are abbreviated in the books and where they were I have explained them more fully. I have stated all of the records pertaining to the proceedings upon which the patent was issued except the base of the lieu selection in Arizona. The patent, exhibit 5, does not show the description of the base land. My records merely refer to the base as within Section 25, Township 18 North, Range 5 East, Arizona. The powers of attorney, exhibits 3 and 4, do show the base. The serial register shows that the act under which the selection was made was Forest Lieu Selection Act. Witness excused.

[Testimony of W. E. Cullen, for Plaintiff.]

W. E. CULLEN, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct Examination by Mr. GRAY.

My name is W. E. Cullen; I reside at Spokane, Washington; I am an attorney at law; I am one of the attorneys for McGoldrick Lumber Company and have been for several years. I was one of the attorneys in the contest referred to subsequent to the issu-

(Testimony of W. E. Cullen.)

ance of patent. I am acquainted with A. V. Braderick, one of the officers of the Milwaukee Lumber Company. I had a conversation with Mr. Braderick with reference to the conveyance by Kinsolving, either individually or as attorney in fact of the lands referred to in the complaint; that conversation with Mr. Braderick concerning this land was last May or June in Coeur d'Alene. I think Mr. Braderick was Secretary and Manager of the Milwaukee Lumber Company. My information concerning his connection with the company is that [202] I have seen letters signed by him and also deeds and other documents. The appellation was Secretary and Manager. The conversation was I simply inquired generally of Mr. Braderick whether he knew of the claim of the McGoldrick Lumber Company to this property. He stated that he did, that he had examined into it before the purchase was made and had caused an examination to be made of the records, something like that.

Cross-examination by Mr. MOORE.

That conversation which I narrated took place sometime last May or June in Coeur d'Alene. I think Mr. Braderick was here to testify in this case; it was the time we appeared here to take the testimony before the referee. At the time we signed this stipulation we made an application for a continuance sometime about May first or subsequent. My memory is uncertain whether we came back here again or not. He said he knew of the existence of the claim of the McGoldrick Lumber Company before he

(Testimony of W. E. Cullen.)

made the purchase. I talked to him very briefly. I was going to call him as a witness. I asked him a leading question or two to which he replied. I have had to some extent the local management of this case. I did not subpoena him as a witness, if Mr. Gray has, we have acted jointly in the matter.

Mr. GRAY.—I will say that the records show that I have issued a subpoena and can't find him.

The witness thereupon proceeded: He was here the other day when we were ready for trial. Mr. Gray attended to the issuance of the subpoenas for the present hearing. I told Mr. Gray that Mr. Braderrick made these statements [203] to me some months ago. I think I said I had some conversation with Mr. Herrick; my recollection as to that is somewhat uncertain because it was a general conversation with Mr. Herrick. I told Mr. Gray to subpoena Mr. Herrick and Mr. Norris. I think I said to subpoena Mr. Braderick; I think I said to subpoena whoever was in charge of the Milwaukee Lumber Company.

Redirect Examination by Mr. GRAY.

I left the entire matter of subpoenaing witnesses to Mr. Gray; I talked to Mr. Norris about the same time. We may have been all standing around together, but my recollection is that the talks which I had were probably different, and may not have been overheard by anyone, or may have been overheard; I wasn't attempting to conceal it in any way. Mr. Norris is one of the attorneys for the Milwaukee Lumber Company, one of those appearing here.

Witness excused.

Mr. GRAY.—Now, Mr. Moore, it is understood that there is no question but that the McGoldrick Lumber Company purchased the original claim of Shannon.

Mr. MOORE.—Yes, we have a written stipulation here that all exhibits attached to the bill of complaint, and those filed after the bill was filed, are all to be considered true and correct copies of the exhibits filed in the contest in the land office, and may be used as exhibits in this suit.

Mr. GRAY.—One other thing I ask for the purpose of saving the record, is to show that they have never parted with the title which the McGoldrick Lumber Company acquired. I mean they have not conveyed it away, and still have whatever rights they acquired.

Mr. MOORE.—I will admit that they have never [204] executed any conveyance transferring any interest they might have.

Mr. MOORE.—But I wouldn't want to admit that the receipt for the entry hadn't been cancelled.

Whereupon there was introduced in evidence the two exhibits originally filed in the contest case between C. J. Kinsolving vs. John Shannon and in said proceeding marked Exhibits "F" and "G," which said exhibits were thereupon marked Plaintiff's Exhibits 6 and 7, offered and received in evidence.

Mr. GRAY.—That is all; we will rest with the understanding that we will submit this letter, Exhibit "I," when we get it.

Complainant rests.

DEFENDANTS' CASE.

[Testimony of **E. B. Caple**, for Defendants.]

E. B. CAPLE, a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. MOORE.

My name is E. B. Caple; I am forty years old and reside seven miles south of Coeur d'Alene. I have been a resident of Kootenai County fourteen months, and have been in Idaho ten years. I was acquainted with a man by the name of John Shannon during my residence in Idaho. I knew him in Kootenai County six or seven years ago. At that time I was special agent for the general land office. [205] I have knowledge of the application of John Shannon to purchase land under the timber and stone act. I know the section and range. I don't know the legal subdivision of his selection. It was section 39, township 44 north, range 3.

Q. Now, did you ever have a conversation with Mr. Shannon about his application for the purchase of that land?

Mr. GRAY.—I object to that as incompetent, irrelevant and immaterial and hearsay, and not within the issues in that case.

Here followed argument by respective counsel.

The COURT.—It is not clear to me just what course should be taken in this case, Gentlemen. The general principles are clear, but their application to a case of this character is not free from doubt. We have cases of this character, for instance, where a man enters upon land as a homestead, and before the

(Testimony of E. B. Caple.)

requisite period of residence has expired the officers of the Land Department issue a patent to some third person, which it is claimed by the homestead entryman is in violation of his rights. I think the rule undoubtedly is, in a case of that kind, that it isn't sufficient for the homestead entryman as claimant in a court of equity, seeking to charge the patentee with a trust, as in this case, to show that the patent was wrongfully issued, through error of law on the part of the officers of the Land Department, but the plaintiff in such case must go further and show that he is rightfully entitled to the patent, as a matter of fact. That is, he must [206] show compliance with the homestead laws under which he claims the right to patent, and upon which such claim is based, and if he fails it becomes in that respect unimportant to inquire whether or not the patent was wrongfully issued. We had some cases tried here,—perhaps it was at the last term of court—in which that precise question arose, tried by able counsel, and as I remember both sides conceded such to be the rule, and proof was offered in accordance therewith. Now, in this case the plaintiff comes into court and alleges, must necessarily allege, that it was entitled to patent it, or its predecessors in interest was entitled to patent, but that in violation of such a right the officers of the Interior Department or Land Department have issued patents to the defendant. I have forgotten the exact condition of the record here, but I assume that counsel for the plaintiff claim that the record in the land office itself shows a *prima facie*

(Testimony of E. B. Caple.)

right to receive the patent. In other words, that certain presumptions arise from the proceeding taken in the Land Department. Was a final receipt issued?

Mr. GRAY.—Yes, sir.

The COURT.—In other words, the final receipt was issued, and that therefore the plaintiff is relieved of the burden of showing that it was entitled to patent,—in other words, that the final receipt itself is presumptive evidence of the right now claimed, so that the question here and now really is as to whether or not this presumption, on the case so made, can be overthrown by testimony of the character now offered. [207]

Mr. MOORE.—May I say just one word?

The COURT.—Yes.

Mr. MOORE.—I feel this, that your Honor mis-spoke yourself in saying that what we call the final certificate of evidence that he was entitled to patent. certificate was evidence that he was entitled to patent. so contends.

Mr. MOORE.—Oh, I beg pardon.

The COURT.—Is not that your contention, gentlemen?

Mr. GRAY.—Yes, sir.

The COURT.—In other words, you allege that you are entitled to patent?

Mr. GRAY.—That we would have received it except for this certificate of the Land Department.

The COURT.—You have made no proof of your right except,—

(Testimony of E. B. Caple.)

Mr. GRAY.—As disclosed by the land office records.

The COURT.—And I assume that their contention was their right to a patent was shown *prima facie* by the final certificate, which is ordinarily true.

Mr. MOORE.—That has, as a proposition of law, been discussed by both the Circuit Court of Appeals of this Circuit, and in the Eighth Circuit, and also by the Supreme Court of the United States. Now, that certificate is *prima facie* evidence of the right of the entryman to a patent only when he has complied with the law, and as between him and the Commissioner of the General Land Office who issues the patent. After it has been cancelled, it is evidence of nothing. [208]

The COURT.—That is true, but here it is contended that it has not in law been cancelled that while in form it has been cancelled, the action of the Interior Department in cancelling it was without authority of law, and hence void, and hence of no effect at all, and that therefore the certificate still stands. I assume that to be the course of reasoning.

Mr. MOORE.—That hasn't been the practice followed by the courts. That certificate never is reinstated, but the patentee, under another or different certificate, recognized by the Commissioner of the General Land Office, is made Trustee of the title. The cancelled certificate is never revived by any action of the court at all. The legal title has passed from the Government by virtue of the patent, and the patentee is declared to be the trustee.

(Testimony of E. B. Caple.)

The COURT.—I think I shall let you introduce the evidence, and I will consider later the question as to whether or not it shall be given any effect.

Mr. GRAY.—We have exceptions to all adverse rulings?

The COURT.—Yes.

(Last question read.)

A. Yes.

WHEREUPON the witness proceeded: That statement was reduced to writing. (A certain document was thereupon marked Defendant's Exhibit I.) The witness then proceeded: This paper marked Exhibit I is that written statement of Mr. Shannon. I saw Mr. Shannon sign it. I swore him to it. At that time, I was occupying the position of special agent of the General Land Office. I was getting evidence to cancel the entry for the General [209] Land Office. The last time I saw Mr. Shannon was the day I took that affidavit; I have made search for him. I have looked for him in Coeur d'Alene and inquired for him at some logging camps. I do not know where he is at the present time.

Mr. MOORE.—We offer this statement in evidence, if your Honor please.

Mr. GRAY.—We object to it upon the ground that it is incompetent, irrelevant, and immaterial, that it is hearsay, that it bears upon its face,—that it shows upon its face that it was made at a time subsequent to the time when he had conveyed the property, and therefore would not be binding upon the plaintiff in this case.

(Testimony of E. B. Caple.)

Mr. DUDLEY.—Over sixty days after the title passed from Shannon. It would not be admissible as a declaration against interest, because it appears that at the time this instrument was given Mr. Shannon had no interest in the matter.

The COURT.—I doubt very much whether it is competent, but I shall let it go in with this other proof and consider it all at the same time.

To which ruling complainant excepted and exception was allowed.

Cross-examination by Mr. GRAY.

I was an officer of the United States Government, a special agent of the General Land Office. I got this document which I have presented on the bank of the St. Maries River, while I was in the employ of the United States. I have kept it in my possession at all times since. I didn't transmit it to the Government, when Mr. Kinsolving [210] filed a contest it wasn't of any use to the Government. The contest cancelled the entry, and that is all it was gotten for. I had it in my possession ever since I took it. I exercised my judgment about keeping it or transmitting it to the Department. It was no use transmitting it to the Department after the entry was cancelled. I was not acting for anybody, except for the Government. When I took it, I didn't have any business dealings with Kinsolving at that time. I took this prior to the hearing of the contest; I was present at that hearing; I don't remember when I first advised the defendants here that I had this document. Mr. Kinsolving, I think, spoke some-

(Testimony of E. B. Caple.)

thing to me about it after or before, I don't know which, after or before his contest, I don't remember. I don't remember the date of the contest. I wrote the statement. Mr. Shannon was working in a logging camp and was sober at the time I had him sign it. Further investigation I made after I took the affidavit was to take an affidavit of Billy McCarter and also one from Roy C. Lammers. I did not transmit them to the Government. I did not transmit any of them because the entry was cancelled at a hearing. Contest was filed, it wasn't cancelled, but I gave way for Mr. Kinsolving. Whenever there was a contest filed the Government let the private individual contest the entry. I did not advise Mr. Kinsolving I was waiting until after.

Redirect Examination by Mr. MOORE.

I guess I knew Mr. Kinsolving by sight at the time he filed contest. I found Shannon working in Jack Cox's logging camp on the St. Maries River. He was not [211] right in the camp, he was down at the river doing some work there, and Mr. Babbitt was there with me, and he was out there when I took the statement, and his name is on the statement. He was actually working when I took the statement down there. I took him away from his work.

Witness excused.

[Testimony of Wm. McCarter, for Defendant.]

WILLIAM McCARTER, a witness called and sworn on behalf of defendants, testified as follows:

Direct Examination by Mr. MOORE.

My name is William McCarter. I reside at St. Maries, and have been a resident of Idaho since 1894, residing at St. Maries most of the time. I was acquainted with a man named John Shannon of Kootenai County.

Q. Were you familiar with the land for which he made homestead entry or upon which he made homestead entry at the Coeur d'Alene United States Land Office, embracing the south half of the northwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the northeast quarter of section 9, township 44 north, range 3 east?

Mr. GRAY.—I object, if your Honor please. We are not interested in his homestead application. It is not within the issues in this case. This was a timber and stone entry and whatever he may have done concerning some prior entry is immaterial and irrelevant.

The COURT.—Overruled.

Plaintiff excepted, exception allowed.

WITNESS.—I never saw the land before he filed; I was interested in it though. [212]

Q. How were you interested in the land?

Mr. GRAY.—I move to strike that out. I object to that, if the Court please. The plaintiff here does not derive title through Mr. Shannon as a homestead entryman, it was through a timber and stone entry.

(Testimony of William McCarter.)

Whatever may have been the facts with reference to some prior entry of Shannon's, we are not parties to it or bound by it, nor have we anything to do with it.

Objection was overruled; plaintiff excepted, exception allowed.

A. I paid for the location of it.

Q. What did you pay for the location of it?

A. \$250.00.

Mr. GRAY.—That all goes in, if your Honor please, subject to our objection.

The COURT.—Yes, it may all go in subject to your objection.

WITNESS.—I had an understanding or agreement with Shannon which was not in writing right at the time but was put in writing later.

The COURT.—You say that writing is in evidence?

Mr. MOORE.—That writing is in evidence; yes.

WITNESS.—I procured this written agreement of Mr. Shannon, I remember, when he made application to purchase under the timber and stone act. This written agreement was procured before he proved up or was to prove up on his homestead; it was a day before or two days before. I wouldn't be certain which. I had it recorded. I had a conversation about having an interest in the timber and [213] stone claim, that took place at St. Maries and also here. I had a conversation with him before he made the application, that conversation took place at St. Maries. He come to see me about it; he was

(Testimony of William McCarter.)

to give me an undivided one-half interest in it or \$2,000. I had a conversation with Joseph H. Johnson about this agreement with Mr. Shannon. I had a conversation with Mr. Roy C. Lammers in regard to this. I remember the time Mr. Shannon made proof upon his application under the timber and stone act. The night before or the night he proved up on his timber and stone claim I had this conversation with Lammers; that took place on the street down here. I *may* Roy and I says: "You are going to buy the Shannon claim, are you?" And he says, "Yes," and I said, "I filed a contract against that," and he said, "I can't do nothing with that, Billy; our attorneys say it don't amount to nothing," and I walked off and left him.

Cross-examination by Mr. GRAY.

That contract was the one which I had filed in the Recorder's office in Shoshone County. That was what I was claiming; I was claiming my rights which I had, because I had put up my good money for it. I had no agreement other than that one. We reduced our prior agreements to written form and had it recorded. I had subsequent agreements with Shannon. The subsequent agreement with him was about fifteen days after the date I recorded that instrument, I couldn't say exactly the time, it was about fifteen days later, we came to St. Maries and that was the first arrangement we had subsequent to our written arrangement, that was up at St. Maries. I was over here at Coeur d'Alene [214] when he tried to make his homestead entry, and I believe I

(Testimony of William McCarter.)

went back to St. Maries. I couldn't say exactly how long it was after I had this conversation with him, fifteen days or such a matter, but it was somewhere about that time, and it was up at St. Maries. With reference to the time he and I were over here, that was the time he was going to make his homestead proof. He was over here and I came down; it was about fifteen days subsequent to that, somewhere about there; it might have been more, it might have been less, I cannot say for sure, that I had the conversation with him.

Redirect Examination by Mr. MOORE.

The first talk I had with him after this written agreement was when he was turned down here and couldn't make final proof on his homestead.

The COURT.—I think I will ask this question: When did you first have a conversation with Shannon about the matter of entering this land or having entered it as a timber and stone claim?

A. Well, sir, it was the day that he was refused his final proof, or just a day or so later; I couldn't say for sure. I know we went to Spokane from here and back, and I can't recall now whether it was right at that time or right after we got back to St. Maries, but it was the next time I seen him after he had made his final proof, after he had recalled his homestead filing and filed a timber and stone on it, he said Roy Lammers had advised him to take a fling, to file a timber and stone claim on it, and I says to him, I says, "Johnnie, where does that put you and me?" and he [215] says, "It will be

(Testimony of William McCarter.)

just the same, Billy," he says, "It is all right," and I says, "Is Lammers going to carry this thing through with you?" and he says "No."

Witness proceeds: That was the first time an agreement was made that I should have an interest in the timber and stone claim. I was here when he failed to make his commuted homestead proof. I had a conversation with him that day about the timber and stone entry and we went to Spokane that night.

Witness excused.

[Testimony of Fred Herrick, for Defendant.]

FRED HERRICK, a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination by Mr. MOORE.

My name is Fred Herrick; I reside at St. Maries; my business or occupation is lumberman. I am familiar in a general way with land known as the Shannon claim. I remember the time I purchased that land. I transacted the business connected with the purchase of that land on the part of the Milwaukee Lumber Company. I hold the position of President and General Manager of the Milwaukee Lumber Company. I transacted the business with the Santa Fe Pacific Railroad Company through Kinsolving, with power of attorney for the Santa Fe Railroad. I saw the patent to the Santa Fe Railroad, and the powers of attorney of Kinsolving to sell the land, and a telegram from the land office showing that the title of the land was in the Santa Fe Railroad. The telegram was from the recorder's office

(Testimony of Fred Herrick.)

from Wallace, Shoshone County. The telegram was left in our office, and I tried to find it, and have been unable to find it. It was addressed to Lindquist and Lundquist. It [216] said the title was in the Santa Fe Railroad, Santa Fe Pacific or Santa Fe Railroad. At that time I knew nothing about any claim to this land made by the complainant, McGoldrick Lumber Company. I bought the land, or bargained for the land, and left the matter with Mr. Braderick, and told him to close the deal for the land, and a logging contract on the land.

Cross-examination by Mr. GRAY.

I did not have an attorney look after these matters for me at the time. I was acquainted with Mr. Norris at that time but did not ask his opinion or ask him to draw the conveyances for me. Mr. Norris did not tell me of the old contract between Kinsolving and McGoldrick Lumber Company, and did not tell me that because of that fact he did not want to act as attorney in the matter. I had no attorney at all in the matter. I dealt with Kinsolving with power of attorney from the Santa Fe Pacific Railroad Company. I have been engaged in the lumber business three years. I never bought any scrip land before. I knew a great deal of land in the State was scripped. I never filed any myself at any place. I did not know that Kinsolving was the man who got the real consideration for the property. With regard to the purchase money I gave Kinsolving a contract; a copy of that contract is in evidence here, but you have got manager on it; it doesn't belong

(Testimony of Fred Herrick.)

there. Let me read the contract over. (Witness handed Plaintiff's Exhibit 1.) I think this is correct. We have never paid Kinsolving anything on account of this purchase. I am still withholding all the purchase price. When I bought the land, I bought the land, dictated the contract or form that should be given and gave [217] the data to Mr. Braderick, and went away, and I bought in on the strength of that patent, and the power of attorney and that telegram. I went away and went east, and when I came back there had been an injunction or something commenced against Kinsolving and the Milwaukee Lumber Company and I have never made any investigation as to the title. I did nothing more than I have stated. I did not procure an abstract of title or investigate the records at or prior to the time I purchased the land.

Redirect Examination by Mr. MOORE.

The reason I haven't paid Kinsolving anything under that contract is that before the time the first payment became due there had been a suit and an action started censuring us, Kinsolving and the Milwaukee Lumber Company, with conspiracy, and if we paid the money to Kinsolving, it would be left on our shoulders to fight the conspiracy case, and by holding back the money it would help keep Kinsolving in line to fight this case. I do not know where Mr. Braderick is at this time, I called up our office but they did not know where he was. He went away on business. He went to Spokane and different places looking to buy lumber and sell lumber.

Witness excused.

[Testimony of A. L. Richardson, for Defendants.]

A. L. RICHARDSON, a witness called and sworn on behalf of defendants, testified as follows:

Direct Examination by Mr. MOORE.

I am Clerk of this court. I keep a record of subpoenas issued in civil cases. Subpoenas were issued on Mr. Herrick and Mr. Norris on November 7th. Subpoena issued on Mr. Braderick on December 1st.
[218]

[Testimony of William Schuldt, for Defendants.]

WILLIAM SCHULDT, a witness called and sworn on behalf of defendants, testified as follows:

Direct Examination by Mr. MOORE.

I am deputy United States Marshal. I received a subpoena for A. V. Braderick in this case yesterday morning. I telephoned St. Maries to locate him, and made inquiries of Mr. Herrick here. I reported my failure to get Mr. Braderick to Mr. McCarthy who handed me the subpoena, Mr. McCarthy of Mr. Gray's office. The date of the subpoena for Mr. Braderick is December 1st. I received a subpoena for Mr. Norris and Mr. Herrick; that has been returned.

Cross-examination by Mr. GRAY.

I could have gone on the boat yesterday noon and served Mr. Braderick yesterday if he had been in St. Maries.

Redirect Examination by Mr. MOORE.

I served Mr. Norris and Mr. Herrick on the 21st of November, 1913.

REBUTTAL.

[**Testimony of Roy C. Lammers, for Plaintiff (in Rebuttal).**]

ROY C. LAMMERS, a witness called and sworn on behalf of plaintiff, in rebuttal, testified as follows:

Direct Examination by Mr. GRAY.

My name is Roy C. Lammers; I reside at Spokane, Washington; I am engaged in the lumber business. I am superintendent of the woods department of the McGoldrick Lumber Company, and a stockholder in that company. I was acquainted with John Shannon. The conveyance made by him to me was for the benefit of the McGoldrick Lumber Company. The company furnished the money and I represented the company in the transaction. I do not know where John [219] Shannon is. I have not known for about two years. I have made efforts to locate him, but have not been able to do so. I heard the testimony of Mr. McCarter with reference to a conversation he alleged he had with me after I purchased that land from Shannon. I knew Shannon about a year before I had this conversation with him, and I knew, of course, he had a claim on Marble Creek, and I had my cruisers go over the claim. Mr. McCarter stated to me that he had an interest in the timber and stone claim of Mr. Shannon. He did call my attention to a written agreement. That conversation was just about as he stated it, he said that he had advanced Shannon some money, or Shannon owed him money, and that he had a claim of record showing

(Testimony of Roy C. Lammers.)

an interest in that claim. That was after the time of proof or about the time he made proof. Mr. Dudley was our attorney at that time. We had a copy of the abstract made in Wallace and submitted it to Mr. Dudley. I stated to Mr. McCarter that Mr. Dudley considered his title of no consequence in the case. That was the contract or agreement that was referred to. I had no conversation with McCarter at or about the time Shannon cancelled his homestead entry or about the time I purchased the property. I had nothing whatever to do with any such homestead entry, I did not at any time prior to the time I purchased this claim from Shannon, either individually or for McGoldrick Lumber Company, have any interest whatever therein, nor did I furnish any money therefor.

Cross-examination by Mr. MOORE.

Before we purchased this land we had an abstract of title showing the Shannon-McCarter agreements and submitted [220] it to Mr. Dudley.

Whereupon both parties rested subject to the furnishing of the Exhibit I referred to in the testimony in the Land Department, a copy of which, together with the other exhibits in the case, is attached to this statement of evidence, and a copy of which said exhibit was delivered to and served upon the attorneys for the defendants.

IT IS HEREBY CERTIFIED that the foregoing transcript is a full, true and correct transcript of the testimony and proceedings had upon the trial of the above-entitled action; that said transcript contains

all of the evidence and all proceedings had upon the trial of said action, and the exhibits produced on the trial and Exhibit I referred to during the trial and the same may be approved and allowed, by the Judge of the above-entitled court.

CULLEN, LEE & MATTHEWS,

F. M. DUDLEY,

JOHN P. GRAY,

Attorneys for Plaintiff.

J. H. FORNEY,

FRANK L. MOORE,

Attorneys for Defendants, Kinsolving and Milwaukee Lumber Company.

A. G. ELSTON,

Attorney for Defendants, Lyn Lundquist and Elix Lindquist. [221]

[Certificate Re Statement of Evidence.]

United States of America,

District of Idaho,—ss.

The undersigned Judge of the District Court of the United States for the District of Idaho, Northern Division, being the Judge who tried the above-entitled action, does hereby certify that the foregoing statement contains, in substance, all of the evidence introduced upon the trial of said action, except the exhibits attached to the complaint and made a part of the record by stipulation, and also contains in substance all proceedings had on the trial of said action, and the same is hereby approved and allowed and is deemed adequate to present for review any ruling appearing thereon to have been excepted to by or

deemed excepted to on appeal.

Dated this 5th day of May, 1914.

FRANK S. DIETRICH,

District Judge. [222]

Plaintiff's Exhibit No. 1 [Agreement, Dated September 27, 1911, Milwaukee Lumber Co. and C. J. Kinsolving].

THIS AGREEMENT, made and entered into this 27th day of September, A. D. 1911, by and between the Milwaukee Lumber Company, a corporation, of the first part, and C. J. Kinsolving of the second part, witnesseth:

That whereas, the party of the second part has this day conveyed, as attorney in fact for the Santa Fe Railroad Company to first party the following described land, to wit: The south half of the Northwest quarter, the Southwest quarter of the Northeast quarter, and the Northeast quarter of the Southwest quarter, of Section Nine in Township Forty-four North of Range Three East of the Boise Meridian, Idaho, containing one hundred and sixty acres, more or less, at the agreed price of Twelve Thousand Dollars. It is understood and agreed between the parties hereto, and the first party hereby agrees and binds itself to pay to the second party the said Twelve Thousand Dollars, as follows, to wit: One Thousand Dollars to be paid to the order of said second party, on or before November 1st, 1911; Two Thousand Five Hundred Dollars to be paid to the order of said second party, on or before January 1st, 1912, and the balance of said Twelve Thousand Dollars to be paid to the order of said second party, on

or before July 1st, 1912.

It is further understood and agreed between the parties hereto, that in case the sum of Four Dollars per Thousand feet deducted from the amount to be advanced to Lindquist & Lundquist upon their logging contract in relation to this land, exceeds the sum mentioned to be [223] paid to second party, or his order, on the dates mentioned herein, at such time then, and in that event, the full sum then in the hands of first party by reason of retaining said Four Dollars per thousand feet shall be paid to the second party or his order, in lieu of sums mentioned to be paid to him or his order in lieu of sums mentioned to be paid to him or his order on the various dates mentioned until the full sum of Twelve Thousand Dollars is paid off and discharged; which said sum of Twelve Thousand Dollars the first party agrees and binds itself to pay to second party according to the terms and conditions of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed, sealed and delivered the day and date as above written.

(Signed) MILWAUKEE LUMBER COMPANY,

By A. V. BRADERICK,
Secretary and Manager.

(Signed) C. J. KINSOLVING.

Attest: E. B. FLAGG. [224]

Plaintiff's Exhibit No. 2 [Agreement, September 15, 1911, Santa Fe Pacific R. R. Co. and Milwaukee Lumber Co.].

THIS INDENTURE, Made the 15th day of Sep-

tember, in the year of our Lord One Thousand Nine Hundred and Eleven BETWEEN Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress approved March 3d, 1897, by C. J. Kinsolving, its attorney in fact of St. Maries, Kootenai County, State of Idaho, party of the first part and the Milwaukee Lumber Company, a corporation.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Twelve Thousand (\$12,000.00) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents demise, release and forever quitclaim unto the said party of the second part, and to its successors, heirs and assigns forever all that certain lot, piece or parcel of land, situated in the said Shoshone County of State of Idaho and bounded and particularly described as follows, to wit: The south half of the northwest quarter, the southwest quarter of the northeast quarter, and the northeast quarter of the southwest quarter, of Section Nine in Township Forty-four, North of Range Three East of the Boise Meridian, Idaho, containing one hundred and sixty acres, more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD ALL and singular

the said premises, together with the appurtenances unto the said party of [225] the second part, and to its successors, heirs and assigns forever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

SANTA FE PACIFIC RAILROAD COMPANY. (Seal)

By C. J. KINSOLVING, (Seal)

Its Attorney in Fact.

Signed, sealed and delivered in presence of

E. B. FLAGG.

M. C. PETERSEN.

State of Idaho,

County of Kootenai,—ss.

On this 27th day of September, in the year A. D. 1911, before me M. C. Petersen, a Notary Public, in and for said County and State, personally appeared C. J. Kinsolving, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Santa Fe Pacific Railway Company and acknowledged to me that he subscribed the name of said Railroad Company thereto as principal and his own name as attorney in fact.

[Notarial Seal]

M. C. PETERSEN,

Notary Public in and for said County and State.

[Endorsed]: 26341. Quitclaim Deed. Santa Fe Pacific Railroad Company To Milwaukee Lumber Co. State of Idaho, County of Shoshone,—ss. Filed for Record at the Request of Milwaukee Lumber Co. on the 29th day of September, 1911, at 2 o'clock P. M.,

and Recorded in Book 42 of Deeds on Page 149.
John P. Sheehy, County Recorder. [226]

Plaintiff's Exhibit No. 3 [Power of Attorney, Santa Fe Pacific R. R. Co. to C. J. Kinsolving, January 10, 1906].

**POWER OF ATTORNEY TO CONVEY LIEU
LANDS.**

KNOW ALL MEN BY THESE PRESENTS,
That WHEREAS, The Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress approved March 3, 1897, has relinquished to the United States of America, under the Acts of June 4, 1897, and June 6, 1900, the following described lands located within the San Francisco Mountains Forest Reserve, Territory of Arizona, to wit:

The North Half of the Southeast quarter of Section twenty-five, township eighteen north, Range five east, of the Gila and Salt River Base and Meridian, Arizona, containing eighty acres more or less; and

WHEREAS, The Santa Fe Pacific Railroad Company is entitled to select, in lieu of the lands so relinquished to the United States, a like quantity of vacant, *surveyed*, nonmineral public lands of the United States which are subject to homestead entry;

NOW, THEREFORE, The Santa Fe Pacific Railroad Company has made, constituted and appointed C. J. Kinsolving its true and lawful agent and attorney, for it, and in its name, place and stead, to convey by quitclaim deed all the right, title, interest and claim which the Santa Fe Pacific Railroad Company

has, or may hereafter acquire, in the lands so selected or located by said Santa Fe Pacific Railroad Company, or its duly appointed attorney in fact, in lieu of the above described tract or tracts of land relinquished as aforesaid, in whole or in part, to the full amount of the land so relinquished, as such selection shall have been [227] actually made at the United States District Land Office and which shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., as the lieu lands so selected.

GIVING AND GRANTING unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the above premises, as fully to all intents and purposes as it might or could do if personally present, hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

And the said Santa Fe Pacific Railroad Company to any grantee in any conveyance executed by said attorney hereby gives notice that said attorney hereunder has authority to convey, in whole or in part, only the lands actually selected in lieu of the premises hereinabove specifically described as such lands shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., and any substantial variance between the description of the lieu lands so selected, as the same shall appear described upon such public records, and the premises

conveyed by said attorney as such lieu lands, shall render any conveyance of the latter hereunder void.

IN WITNESS WHEREOF, The Santa Fe Pacific Railroad Company has caused this instrument to be signed by its President and attested by its Assistant Secretary with its seal this 10th day of January, A. D. 1906.

SANTA FE PACIFIC RAILROAD COMPANY.

By E. P. RIPLEY,
President.

(Seal) Attest: E. L. COPELAND,
Assistant Secretary.

Signed, sealed and delivered in presence of
E. J. ENGLE,
E. C. HALL,

Witnesses. [228]

State of Illinois,
County of Cook,—ss.

On this 10th day of January, A. D. 1906, before me, Edward J. Engle, a Notary Public in and for said County and State, personally appeared E. P. Ripley, to me personally known to be the President of the Santa Fe Pacific Railroad Company, and who as such President executed the within instrument on behalf of the corporation therein named; and the said E. P. Ripley being by me duly sworn, did say that he is the President of said Santa Fe Pacific Railroad Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors;

and the said E. P. Ripley acknowledged to me that such corporation executed the same, and said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year above written.

[Notarial Seal]

EDWARD J. ENGLE,
Notary Public.

My Commission expires April 17, 1909.

[Endorsed]: 26338. Power of Attorney to Convey Lieu Lands. Santa Fe Pacific Railroad Company to C. J. Kinsolving. Dated Jan. 10, 1906. Recorded at the Request of Milwaukee Lumber Co. Sep. 29, 1911, at 2 o'clock P. M., in Book "F" of Powers of Atty., Page 496, Records of Shoshone County, State of Idaho. John P. Sheehy, County Recorder. [229]

Plaintiff's Exhibit No. 4 [Power of Attorney, Santa Fe Pacific R. R. Co. to C. J. Kinsolving, January 10, 1906.]

**POWER OF ATTORNEY TO CONVEY LIEU
LANDS.**

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, The Santa Fe Pacific Railroad Company, a corporation duly incorporated under an Act of Congress approved March 3, 1897, has relinquished to the United States of America, under the Acts of June 4, 1897, and June 6, 1900, the following described lands located within the San Francisco Mountains Forest Reserve, Territory of Arizona, to wit:

The North half of the Southwest quarter of Section twenty-five, township eighteen north, Range Five East of the Gila and Salt River base and Meridian, Arizona, containing eighty acres more or less; and

WHEREAS, The Santa Fe Pacific Railroad Company is entitled to select, in lieu of the lands so relinquished to the United States, a like quantity of vacant, surveyed, nonmineral public lands of the United States which are subject to homestead entry;

NOW, THEREFORE, The Santa Fe Pacific Railroad Company has made, constituted and appointed C. J. Kinsolving its true and lawful agent and attorney, for it, and in its name, place and stead, to convey by quitclaim deed all the right, title, interest and claim which the Santa Fe Pacific Railroad Company has, or may hereafter acquire, in the lands so selected or located by said Santa Fe Pacific Railroad Company, or its duly appointed attorney in fact, in lieu of the above described tract or tracts of land relinquished as aforesaid, in whole or in part, to the full amount of [230] the land so relinquished, as such selections shall have been actually made at the United States District Land Office and which shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., as the lieu lands so selected.

GIVING AND GRANTING unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the above premises, as fully

to all intents and purposes as it might or could do if personally present, hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

And the said Santa Fe Pacific Railroad Company to any grantee in any conveyance executed by said attorney hereby gives notice that said attorney hereunder has authority to convey, in whole or in part, only the lands actually selected in lieu of the premises hereinabove specifically described as such lands shall appear described upon the public records in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., and any substantial variance between the description of the lieu lands so selected, as the same shall appear described upon such public records, and the premises conveyed by said attorney as such lieu lands, shall render any conveyance of the latter hereunder void.

IN WITNESS WHEREOF, The Santa Fe Pacific Railroad Company has caused this instrument to be signed by its President and attested by its Assistant Secretary with its seal this 10th day of January, A. D. 1906. [231]

SANTA FE PACIFIC RAILROAD COMPANY.

By E. P. RIPLEY,
President.

(Seal) Attest: E. L. COPELAND,
Assistant Secretary.

Signed, sealed and delivered in presence of

E. J. ENGLE,

E. C. HALL,

Witnesses. [232]

State of Illinois,
County of Cook,—ss.

On this 10th day of January, A. D. 1906, before me, Edward J. Engle, a Notary Public in and for said County and State, personally appeared E. P. Ripley, to me personally known to be the President of the Santa Fe Pacific Railroad Company, and who as such President executed the within instrument on behalf of the corporation therein named; and the said E. P. Ripley, being by me duly sworn, did say that he is the President of said Santa Fe Pacific Railroad Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and the said E. P. Ripley acknowledged to me that such corporation executed the same, and said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year above written.

[Notarial Seal]

EDWARD J. ENGLE,
Notary Public.

My Commission expires April 17, 1909.

[Endorsed]: 26339. Power of Attorney to Convey Lieu Lands. Santa Fe Pacific Railroad Company to C. J. Kinsolving. Dated Jan. 10, 1906. Recorded at the Request of Milwaukee Lumber Co., Sep. 29, 1911, at 2 o'clock P. M., in Book "F" of Powers of Atty., Page 497. Records of Shoshone

County, State of Idaho. John P. Sheehy, County Recorder. [233]

Plaintiff's Exhibit No. 5 [U. S. Patent to Santa Fe Pacific R. R. Co., March 27, 1911].

Coeur d'Alene, 06636.

THE UNITED STATES OF AMERICA,

To all whom these presents shall come, GREETING:

WHEREAS, The Santa Fe Pacific Railroad Company, being the owner of a tract of land situated and included within the limits of a public forest reservation, known and officially designated as the San Francisco Mountains Forest Reserve, Arizona, has, under the provisions of the Act Approved June 4, 1897, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes," reconveyed and relinquished the said tract to the United States and has, under the provisions of said act, selected in lieu thereof the following described tract of vacant public land now open to settlement, to wit:

The South half of the Northwest quarter, the Southwest quarter of the Northeast quarter, and the Northeast quarter of the Southwest quarter of Section nine in township forty-four north of range three east of the Boise Meridian, Idaho, containing one hundred sixty acres;

NOW KNOW YE, That the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said Santa Fe Pacific Railroad Com-

pany, and to its successors, the lands above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Santa Fe Pacific Railroad Company, and to its successors and [234] assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts, and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In Testimony Whereof, I, WILLIAM H. TAFT, President of the United States of America, have caused these latters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

By the President: WM. H. TAFT,
By M. P. LE RAY,
Secretary.

H. W. SANFORD,

Recorder of the General Land Office.

RECORDED: Patent Number 186176.

[Endorsed]: 26340. U. S. Patent to Santa Fe Pacific Railroad Company. S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$

NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of Sec. 9, Tp. 44, N. R. 3 E., B. M., 160 acres. Recorded at the request of Milwaukee Lumber Co. Sep. 29, 1911, at 2 o'clock P. M. in Book "42" of Deeds, page 148, Records of Shoshone County, State of Idaho. John H. Sheehy, County Recorder.

Received April 5, 1911. U. S. Land Office, Coeur d'Alene, Idaho. [235]

Plaintiff's Exhibit No. 6 [Sworn Statement of John Shannon].

**TIMBER AND STONE LANDS—SWORN
STATEMENT.**

LAND OFFICE AT COEUR D'ALENE, IDAHO.

Sept. 26, 1906.

I, John Shannon, of St. Joe, County of Kootenai, State of Idaho, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by Act of August 4, 1892, for the purchase of the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 9, Township 44, N. of Range 3 E., B. M., in the district of lands subject to sale at Coeur d'Alene, Idaho, do solemnly swear that I am a native citizen of the United States, of the age of 40 years, and by occupation—woodman; that I have personally examined said land, and from my personal knowledge state that said land, is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other im-

provements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other applications under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except [236] myself, and that my postoffice address is St. Joe, Idaho.

JOHN SHANNON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ——), and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 26th day of Sept. 1906.

R. N. DUNN,
Register. [237]

**[Testimony of John Shannon in Support of
Application for Timber Land.]**

TIMBER AND STONE LANDS.

TESTIMONY OF CLAIMANT.

JOHN SHANNON, being called as a witness in support of his application to purchase the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Section 9,

Township 44 N., Range 3 E., B. M., testified as follows:

Ques. 1. What is your age, postoffice address, and where do you live?

Ans. Age 40 years; St. Joe, Idaho, where I live.

Ques. 2. Are you a native born citizen of the United States; and if so, in what State or Territory were you born?

Ans. Yes. Born in Holton, State of Idaho.

Ques. 3. Are you the identical person who applied to purchase this land on the 26th day of September, 1906?

Ans. Yes.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. Yes, sir, all over it thoroughly.

Ques. 5. When and in what manner was such inspection made?

Ans. About 15 or 16 days ago. I examined it thoroughly on foot.

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Ans. No, there are no improvements. Very little. There is just a cabin on it. That is all the improvements on [238] the land? Yes. Whose cabin is that? It is mine.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No. If the timber were removed it could

not be cultivated.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

Ans. It is on top of a hill. It is kind of a hard clay in places, rock to it. What causes render this land unfit for cultivation? I never could raise anything on it, it was too rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. No. It is valuable chiefly for timber.

Ques. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because I don't think it is good for anything else.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. I don't know just exactly how much.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you [239] directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may issue, in whole or in part, to the benefit of any person except yourself?

Ans. No.

Ques. 15. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. Yes.

JOHN SHANNON.

I HEREBY CERTIFY that the above-named John Shannon personally appeared before me; that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto and that the same was subscribed and sworn to before me at Coeur d'Alene, Idaho, this 16th day of January, 1907.

R. N. DUNN,
Register.

NOTE—Every person answering falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I HEREBY CERTIFY THAT I HAVE tested the accuracy of affiant's information and the *bona fides* of this entry [240] by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or specu-

lation; and whether he has conveyed the land or his right thereto or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself, and am satisfied from such examination that the entry is made in good faith for entrymen's own exclusive use and not for sale or speculation, not in the interest nor for the benefit of any other person or persons, firm or corporation.

R. N. DUNN,
Register. [241]

TIMBER AND STONE LANDS.

Cross-examination of Claimant in Connection with
Direct Examination on Form 4-370.

Before taking the testimony the Register and Receiver will read, or cause to be read, to the witness, Section 2392 of the Revised Statutes in regard to perjury see bottom of page on Form 4-371 and see that witness understands same.

Ques. 1. Are you an actual *bona fide* citizen of this State?

Yes.

Ques. 2. Are you married or single?

Single.

Ques. 3. Where did you reside prior to becoming a resident of this State, and what was your occupation?

In Montana. I was contracting, logging, driving, excavating, railroading.

Ques. 4. How long have you been an actual resident of the State, and where have you lived during all of this time?

About 5 years I have lived principally at Coeur d'Alene and the Maries.

Ques. 5. What has been your occupation during the past year and where and by whom have you been employed, and at what compensation?

The last year I have been working in the woods sometimes, not very much. I haven't been doing anything in particular outside of that.

When you haven't been doing anything where have you been?

I have been in the Maries, St. Joe, Coeur d'Alene, and Marble Creek, Idaho.

What were you doing in Marble Creek?

Nothing very particular, just cruising through the country there, looking around.

Ques. 6. How did you first learn about the particular [242] tract of land, and that it would be a good investment to buy it?

About two years ago I was up through there and looked at it myself; I wasn't any ways confident at the time that it was a good investment. About 90 days ago I concluded it was a good investment.

How did you come to that conclusion?

I thought it would be a good fair investment to invest that much at that time.

Ques. 7. Did you pay or agree to pay anything for this information? If so, to whom, and the amount?

No.

Ques. 8. Have you made a personal examination of each smallest subdivision of said land? If so, state when and under what circumstances and with whom.

Yes. I made the examination with both my witnesses about 16 days ago.

Was that the first time you ever examined this land?

I examined it thoroughly several times before that. I simply wanted to find out if this land was good for agricultural or for stone and timber.

Ques. 9. How did you identify this land? Describe it fully. I looked it over, looked at the corner posts. The land slopes to the NW. Timber is white pine.

Ques. 10. How many thousand feet, board measure, of lumber did you estimate that there is on this entire tract, and what is the stumpage value of same?

I would judge there would be about 30,000,000 feet. Stumpage value, that I couldn't say.

Ques. 11. Are you a practical lumberman or woodsman? If not, how did you arrive at your estimate of the quantity and value of the lumber on hand?

Why, yes, sir.

Ques. 12. What do you expect to do with this land and the lumber on it when you get title to it?
[243]

I haven't got any idea yet.

Ques. 13. Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so, who are they, and how

did you know of them?

No.

Ques. 14. Has any person offered to purchase this land after you acquire title? If so, who, and for what amount.

No.

Ques. 15. Where is the nearest and best market for the timber on this land at the present time?

I would judge the head of navigation.

Ques. 16. Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and so you expect to pay for the land with your own money?

Yes.

Ques. 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?

I have had it for quite a good long while, I worked for it, earned it in Montana, Washington and Idaho.

Ques. 18. Have you kept a bank account during the past six months, and if so, where?

Yes. In Kalispell, Montana Bank.

JOHN SHANNON.

Sworn to and subscribed before me this 16th day of January, 1907.

R. N. DUNN,

Register. [244]

Witness SHANNON—Further examination.

Q. When you state that you examined this land several times thoroughly for the purpose of determining whether it was valuable chiefly for timber or for agricultural purposes, was that on the occasion

when you were living on the land as a homestead?

A. Yes.

Q. How did you come to get Theriault to act as a witness for you?

A. He had been in that country quite a long while.

Q. Did he ever offer to act as a witness for you?

A. When I asked him he did.

Q. *Have* anyone discussed with you whether you could sell this timber to anyone?

A. Not that I know of.

Q. Has not any person representing any of the timber companies approached you asking for an option or chance to buy this land after you get title to it? A. No.

Q. Do you know any of the men who are buying for any of the timber companies? A. Yes.

Q. State who they are.

A. Not just in there; some people up on the Maries, Davies is about the only man I know of.

Q. Is not Theriault working for the Shevlin Clarke Timber Co.?

A. Not that I know of at all.

Q. Is not Theriault and his brother taking options on lands in that country? [245]

A. Not that I know of.

Q. Do you know Mr. Flaherty, representing the Shevlin Clarke Co.?

A. No, sir, never met him.

Q. Have you not made a verbal agreement to convey this land to the Shevlin Clarke Timber Company when you get title to it? A. No.

Q. Have you not made a verbal agreement to con-

vey one-half interest in this land after you get title to it? A. No.

Q. How do you explain the fact that it has been reported in this office that you have made a verbal *agreement convey* a half interest in this land after you get title to it?

A. I don't understand it at all.

Q. Have you been introduced to anyone representing any of the timber companies in the last week?

A. In the last week, no, sir, I haven't met any of them at all.

JOHN SHANNON.

Sworn to and subscribed before me this 16th day of January, '07.

R. N. DUNN,
Register. [246]

**Plaintiff's Exhibit No. 7 [Letter, Roy C. Lammers
to R. E. McFarland].**

R. E. McFarland,
Coeur d'Alene, Idaho.

Dear Sir:—

Herewith I hand you affidavit for Mr. McCarter to sign before a Notary. He can then place it in the bank, drawing on me through the Old National Bank of this City, for \$600.00.

Yours truly,
ROY C. LAMMERS. [247]

Defendant's Exhibit No. 1 [Affidavit of John Shannon].

State of Idaho,

County of Kootenai,—ss.

I, John Shannon, being first duly sworn, depose and say that my residence and postoffice is St. Maries, Idaho. That he is the person that made H. E. #4574 for S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 9, T. 44, R. 3 E., B. M., on July 17, '05, and offered commutation proof on same on Sep. 26-06. Said proof was rejected by the officers of the U. S. Land Office and on the same day I relinquished the H. E. and filed a T. & S. Cash Entry on advice of Roy C. Lammers and Joseph H. Johnson of Coeur d'Alene, Idaho. Said Joseph H. Johnson agreed to furnish all the money I needed to file on the land as a T. & S. entry and pay the Government for the land when I would offer proof. I filed on the above land on Sep. 26-06, and the notice was published in the Santa Idaho paper. I went to Coeur d'Alene on the 30th of Dec. 1906,—15 days before I offered proof on the T. & S. entry, and I roomed at Joseph H. Johnson's hotel and saloon. Said Joseph H. Johnson furnished me all the money I wanted with the understanding or agreement that he was to get the land before I made proof on the above T. & S. entry. I made a deed to said Johnson before I offered proof on the above T. & S. and after I offered proof I stayed at Johnson Hotel and on the 25th of April I made a deed to Roy C. Lammers of Spokane and deeded him the above T. & S. entry for consideration

of \$8,000. After I sold, said Lammers gave said Johnson a check for \$2,700.00 and he gave Judge Morgan a check for \$1,000.00 for the purpose of [248] protecting him against the contests that had been filed by John English and Fred Hamilton of Spokane. Also said Lammers checks out \$600.00 to be paid to William McCarter at St. Maries, Idaho, checked out \$33.90 for Calhoum Hardware Store of St. Maries, Idaho, and then said Roy C. Lammers gave me a check for the balance *which* \$3,057.00.

JOHN SHANNON.

Subscribed and sworn to before me this 12th day of July 1907 (before S. M. Babbet)

E. B. CAPLE,

Special Agent, G. L. O.

Witness: S. M. BABBITT. [249]

Exhibit "I" [Letter, June 11, 1907, to S. L. McFarland].

4-207.

380863 DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

Washington, D. C.

Dec. 9, 1913.

I hereby certify that the annexed copy of letter, marked Exhibit "I," is a true and literal exemplification from the copy filed with Coeur d'Alene 0668, on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office

to be affixed, at the City of Washington, on the day and year above written.

[Seal]

C. M. BRUCE,

Assistant Commissioner of the General Land
Office.

380863-1

Serial 0668

C. E. 2500

June 11, 1907.

S. L. McFarland, Esq.,

St. Maries, Idaho.

(File No. —: John Shannon.)

Dear Sir:—

Mr. Roy C. Lammers has referred to us your letter of May 15, 1907, returning the affidavit prepared for William McCarter, stating that Mr. McCarter does not feel disposed to sign this, but is willing to give a quitclaim deed for this land. As Mr. McCarter has no interest in this land whatever, we do not care anything for a quitclaim deed from him, but must insist upon the affidavit, otherwise Mr. Lammers, under our instructions, will retain the consideration for this land now in his hands until the patent is issued, as the guarantee of title.

Yours truly,

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [250]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST,
Defendants.

Petition for Order Allowing Appeal.

To the Honorable, the Judge of the United States
District Court for the District of Idaho, North-
ern Division :

The above-entitled complainant, the McGoldrick Lumber Company, feeling itself aggrieved by the decree made and entered in the above-entitled court in the above-entitled cause on the 6th day of February, 1914, being the decree on the merits herein, hereby prays for the allowance of an appeal from said decree and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors annexed hereto and which is filed herewith, and that a transcript of the records and proceedings upon which said decree was rendered may be sent, duly authenticated, to the said Circuit Court of Appeals, under and according to the laws of the United States in such case made and provided, and the com-

plainant hereby offers to execute such bond, with good and sufficient surety, which may be required by the Court in the premises.

CULLEN, LEE & MATTHEWS,
F. M. DUDLEY,
JOHN P. GRAY,

Solicitors for Complainant.

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [251]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST,
Defendants.

Assignment of Errors.

Comes now the complainant and files the following assignment of errors upon which it will rely upon its appeal from the decree made by this Honorable Court on the 6th day of February, 1914, in the above-entitled action, and the said complainant says that the said decree in said cause is erroneous and against the just rights of the complainant for the following reasons:

I.

The Court erred in overruling the objection of the complainant to the following question asked of the witness E. B. Caple called by the defendants:

“Q. Now, did you ever have a conversation with Mr. Shannon about his application for the purchase of that land?”

II.

The Court erred in overruling the objection of the complainant to the introduction in evidence of Defendants' Exhibit No. 1, and in permitting the same to be introduced in evidence.

III.

The Court erred in overruling the objection of the complainant to the testimony of E. B. Caple, concerning a [252] conversation with John Shannon, and to the statements of Shannon made to the said Caple.

IV.

The Court erred in holding and deciding that the agreement between John Shannon and William McCarter, dated September 24, 1906, and offered as an exhibit in the contest in the Land Department and there rejected, was before the Land Department or the Secretary of the Interior, or material to the consideration of the said controversy between John Shannon and C. J. Kinsolving.

V.

The Court erred in overruling the objection of the complainant to the following question asked of the witness William McCarter, a witness called by the defendant:

“Q. Were you familiar with the land for which he made homestead entry or upon which he made homestead entry at the Coeur d’Alene United States Land Office, embracing the South half of the Northwest quarter, the Northeast quarter of the Southwest quarter and the Southwest quarter of the Northeast quarter of Section 9, Township 44, North, Range 3 East?”

VI.

The Court erred in overruling the objection of the complainant to the following question asked of the witness William McCarter, a witness called by the defendant:

“Q. How were you interested in the land?”

VII.

The Court erred in admitting the testimony of William McCarter over the objection of the complainant concerning an agreement between John Shannon and William McCarter with reference to a homestead entry of Shannon. [253]

VIII.

The Court erred in holding and deciding that in the controversy in the Land Department or before the Secretary of the Interior the entryman Shannon was seeking affirmative relief, and that the burden was upon him to show that he was entitled to receive the patent which he sought to have issued.

IX.

The Court erred in holding and deciding that the burden was upon the entryman Shannon in the Land Department or before the Secretary of the Interior to show that he was guilty of no fraud, and in failing

to hold that the burden was upon the person alleging fraud to prove the same by clear and convincing testimony.

X.

The Court erred in holding and deciding that the standard or measure of proof required in the Land Department or before the Secretary of the Interior to overturn a final certificate and cancel the same for fraud is or should be different than the measure or standard of proof required in the courts to establish fraud.

XI.

The Court erred in holding and deciding that the Land Department or the Secretary of the Interior could cancel a certificate of entry regularly issued on the ground of fraud upon any less measure of proof than a court of equity could cancel a patent.

XII.

The Court erred in holding and deciding that it was not necessary to overthrow the same presumption of honesty and the compliance with the law attending a patent, in order to cancel a certificate of entry.
[254]

XIII.

The Court erred in failing to hold that the issuance of the final certificate of entry to the entryman Shannon was *prima facie* evidence and raised the legal presumption that the entryman Shannon had complied with the law; and in failing to hold that the same could not be cancelled except for fraud, the testimony of which should be clear, unequivocal and convincing.

XIV.

The Court erred in deciding that the Land Department or the Secretary of the Interior could cancel a certificate of entry regularly issued on the ground of fraud, except upon testimony clear, unequivocal and convincing, and in failing to hold that the Land Department or the Secretary of the Interior had no power to cancel the same upon even a bare preponderance of the evidence which left the issue in doubt.

XV.

The Court erred in failing and refusing to hold that the complainant was the owner of the lands described in the complaint, to wit, the South half of the Northwest quarter; the Southwest quarter of the Northeast quarter, and the Northeast quarter of the Southwest quarter of Section 9, Township 44, North of Range 3, *ELB. M.*, and that the defendants hold the same in trust for the complainant.

XVI.

The Court erred in failing to hold and decree that the defendants be required to convey to the complainant the said premises and the whole thereof.

XVII.

The Court erred in dismissing the complainant's bill. [255]

XVIII.

The Court erred in not entering judgment in favor of the complainant and against the defendants as prayed for.

XIX.

The Court erred in not holding that the action of the Land Department and the Secretary of the In-

terior in cancelling the entry of John Shannon, the grantor of the complainant was illegal, without authority of law and arbitrary.

XX.

The Court erred in holding that the Land Department of the United States and the Secretary of the Interior in cancelling the said entry acted in accordance with law and in failing to hold that the action of the Land Department and the Secretary of the Interior was in violation of law and of the rights of this complainant.

XXI.

The Court erred in not holding and deciding that the Register and Receiver of the United States Land Office at Coeur d'Alene, Idaho, erred in holding that the timber and stone entry No. 2500, made by John Shannon for the land in controversy in the contest filed by the defendant, Charles J. Kingsolving, was made for speculative purposes, and not for the sole and exclusive benefit of said John Shannon; and erred in holding said entry for cancellation and in not holding that the Commissioner of the General Land Office and the Hon. Secretary of the Interior erred in affirming the decision of the said Register and Receiver and in holding said entry No. 2500 should be cancelled, and in not holding that each and every act of said officers in regard to the same was and is against the laws of the United States.

XXII.

The Court erred in not holding that the Hon. Secretary of the Interior in making and rendering his decision affirming the [256] Register and Receiver

of the Coeur d'Alene Land Office in holding the entry of John Shannon for cancellation, wrongfully and unlawfully, against the evidence at said hearing, and without any testimony whatsoever to support said finding found the said entry was made for speculative purposes and not for the sole and exclusive benefit of the applicant John Shannon; and erred in not holding that the said Secretary of the Interior misconstrued and misinterpreted the law in making said decision and in cancelling the entry of said John Shannon and in not issuing a patent for said land.

XXIII.

The Court erred in failing to hold and decide that there was no evidence before the Land Department or the Secretary of the Interior to justify the cancellation of the certificate of entry issued to John Shannon on the land described in the complaint.

XXIV.

The Court erred in failing to hold that the Land Department and the Secretary of the Interior erred in cancelling the entry of John Shannon, No. 2500, for the lands described in the complaint, and in failing further to hold that the defendant, Milwaukee Lumber Company, was not an innocent purchaser, and in failing to hold that said company acquired said lands subject to the right of this complainant.

WHEREFORE, the complainant, McGoldrick Lumber Company, prays that for the errors aforesaid and other errors appearing in the said cause to

its prejudice the said decree may be reversed.

CULLEN, LEE & MATTHEWS,
F. M. DUDLEY,
JOHN P. GRAY,

Attorneys for Complainant.

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [257]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST,
Defendants.

**Order Allowing Appeal [and Fixing Amount of
Bond].**

The above-named complainant, McGoldrick Lumber Company, feeling itself aggrieved by the decree and judgment entered in the above-entitled suit on the 6th day of February, 1914, doth hereby appeal from said decree and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that its appeal be allowed, and that a transcript of the records and proceedings therein, upon which said decree was made, duly authenti-

cated, may be sent to the said United States Circuit Court of Appeals for review.

CULLEN, LEE & MATTHEWS,
F. M. DUDLEY,
JOHN P. GRAY,

Solicitors for Complainant.

And now, on this 5th day of May, 1914, it is ORDERED that the appeal prayed for is hereby allowed; the amount of the Bond on Appeal be and the same is hereby fixed in the sum of 500.00 Dollars, and further proceedings in this court be stayed pending said appeal.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [258]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
that we, McGoldrick Lumber Company, a corpora-

tion, as principal and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Charles J. Kinsolving and Jane Doe Kinsolving, whose real name is unknown, his wife, Lyn Lundquist and Elix Lindquist and their and each of their heirs, administrators, executors and assigns, and Milwaukee Lumber Company, a corporation, and its successors and assigns, defendants in the above-entitled cause, in the sum of Five Hundred Dollars, lawful money of the United States, for the payment of which well and truly to be made, we hereby bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 2d day of May, 1914.

WHEREAS, on the 6th day of February, 1914, a decree and judgment was entered in the above-entitled cause in the court aforesaid in favor of the defendants and against the complainant, and the said complainant McGoldrick Lumber [259] Company, is prosecuting an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, McGoldrick Lumber Company, shall prosecute the same to effect, and answer all costs and damages that may be awarded against it, if it fails to make its appeal good, then this obligation shall be void; other-

wise the same shall be and remain in full force and effect.

McGOLDRICK LUMBER COMPANY,
[Seal] By JOHN P. GRAY,
Its Attorney and Agent.
FIDELITY & DEPOSIT COMPANY OF
MARYLAND,
By ROBT. H. ELDER,
Attorney in Fact.
A. V. CHAMBERLAIN,
Agent.

State of Idaho,
County of Kootenai,—ss.

Albert V. Chamberlain, being first duly sworn, on his oath deposes and says: That he is the Agent of Fidelity & Deposit Company of Maryland, a corporation, that executed the foregoing bond as surety, and was authorized to execute said bond in behalf and in the name of said corporation; that the said corporation is authorized by virtue of a full compliance with the laws of the State of Idaho to do business in said state and to execute this bond, and the said corporation is worth the sum of One Thousand Dollars in property not exempt from execution.

ALBERT V. CHAMBERLAIN,

Subscribed and sworn to before me this 2d day of May, 1914.

[Seal] FLORENCE A. DEMERS,
Notary Public.

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [260]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Complainant,
vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.
Defendants.

**Order Directing Transmission of Original Exhibits,
etc., to Appellate Court.**

On motion of counsel for complainant, it is hereby
ORDERED that the Clerk of the above-entitled
court be authorized to transmit the original exhibits
used upon the trial of this cause to the United States
Circuit Court of Appeals for the Ninth Circuit at
San Francisco, Cal., the same to be used on argument
of said cause on appeal.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 5, 1914. A. L. Richard-
son, Clerk. [261]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.

Defendants.

Praecipe for Transcript.

To A. L. RICHARDSON, Clerk of the Above-en-
titled Court:

You will please prepare transcript of the complete
record in the above-entitled cause to be filed in the
office of the United States Circuit Court of Appeals
for the Ninth Circuit under the appeal perfected to
said court, and include in said transcript the follow-
ing pleadings, proceedings, papers, records and files,
to wit:

Bill of Complaint, Amended and Supplemental
Bill of Complaint, Demurrer of Defendants Lund-
quist and Lindquist, Demurrer of Kinsolving and
wife and Milwaukee Lumber Company, Order Over-
ruling Demurrers to Bill of Complaint, Answers of
Defendants Charles J. Kinsolving and Jane Doe
Kinsolving, his Wife, and Milwaukee Lumber Com-
pany, Answers of Lundquist and Lindquist, Replica-
tions to said Answers, Exhibits introduced upon the

trial of said action and received in evidence, Opinion of the Court, Decree and Judgment, Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Undertaking and Bond on Appeal, Citation, Order for Transmission of Exhibits, Statement of Evidence, Stipulation for Settlement of Statement of Evidence, Order Settling Statement of Evidence, and any and all other Record entries, pleadings, proceedings, papers and files necessary [262] and proper to make a complete record upon said appeal in said cause.

Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

CULLEN, LEE & MATTHEWS,
F. M. DUDLEY,
JOHN P. GRAY,

Solicitors for McGoldrick Lumber Company.

[Endorsed]: Filed May 5, 1914. A. L. Richardson, Clerk. [263]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,
Complainant,
vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.
Defendants.

Citation on Appeal [Original].

United States of America,—ss.

To Charles J. Kinsolving and Jane Doe Kinsolving
and Milwaukee Lumber Company, a Corpora-
tion, Lyn Lundquist and Elix Lindquist:

You and each of you are hereby cited and ad-
monished to be and appear at a term of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit to be holden in the City of San Francisco, State
of California, on the 4th day of June, 1914, at 10
o'clock of said day, pursuant to an appeal filed in
the clerk's office of the District Court of the United
States for the District of Idaho, Northern Division,
where McGoldrick Lumber Company is complainant
and appellant, and you are defendants and re-
spondents, to show cause, if any there be, why said
decree entered in the above-entitled court and cause
on the 6th day of February, 1914, being a decree upon
the merits in said cause, should not be reversed and

set aside and speedy justice done to the parties in that [264] behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this 5th day of May, 1914.

FRANK S. DIETRICH,

Judge.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

Service of the above and foregoing Citation on Appeal in the above-entitled action is hereby admitted this 11th day of May, 1914.

J. H. LOMEY,

FRANK L. MOORE,

B. F. NORRIS,

Solicitors for Defendants, Kinsolving & Milwaukee Lumber Company. [265]

[Endorsed]: (Original.) No. 519. In the District Court of the United States, for the District of Idaho, Northern Division. McGoldrick Lumber Co., Plaintiff, vs. Charles J. Kinsolving et al., Defendants. Citation or Appeal. Filed on return May 16, 1914. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy. [266]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.

Defendants.

Return to Record.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [267]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

McGOLDRICK LUMBER COMPANY,

Complainant,

vs.

CHARLES J. KINSOLVING and JANE DOE
KINSOLVING, Whose Real Name is Un-
known, His Wife, and MILWAUKEE LUM-
BER COMPANY, a Corporation, LYN
LUNDQUIST and ELIX LINDQUIST.

Defendants.

**Certificate of Clerk United States District Court to
Transcript on Appeal.**

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, Northern Division, do hereby certify the foregoing transcript of pages number 1 to 268, inclusive, to be full, true and correct copy of the pleadings, and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with Praecipe for Transcript on file in said cause.

I further certify that the costs of the record herein amounts to the sum of 146.90 Dollars, and that the same has been paid by the appellant.

WITNESS my hand and the seal of said Court affixed at Boise, Idaho, this 26th day of May, 1914.

[Seal]

A. L. RICHARDSON,

Clerk. [268]

[Endorsed]: No. 2429. United States Circuit Court of Appeals for the Ninth Circuit. McGoldrick Lumber Company, a Corporation, Appellant, vs. Charles J. Kinsolving and Jane Doe Kinsolving, Milwaukee Lumber Company, a Corporation, Lyn Lundquist and Elix Lindquist, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Northern Division.

Received and filed May 28, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

